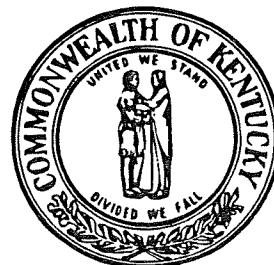


# ADMINISTRATIVE REGISTER OF KENTUCKY

## LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

VOLUME 22, NUMBER 4  
SUNDAY, OCTOBER 1, 1995



Administrative Regulation Review Subcommittee, October Agenda .....	671
Regulation Review Procedure .....	674
Reprint:	
Department of Insurance .....	675
Notices of Intent:	
Council on Higher Education .....	677
Registry of Election Finance .....	677
Department of Fish and Wildlife Resources .....	678
Department of Agriculture .....	679
NREPC - Air Quality .....	680
Petroleum Storage Tank Environmental Assurance Fund Commission ..	681
Department of Corrections .....	682
Department of State Police .....	685
Workforce Development Cabinet .....	690
Labor Cabinet - Workers' Claims .....	691
Cabinet for Human Resources .....	692
Emergencies:	
Registry of Election Finance .....	694
Department of Fish and Wildlife Resources .....	695
Petroleum Storage Tank Environmental Assurance Fund Commission ..	700
Department of State Police .....	703
Cabinet for Human Resources .....	713
As Amended:	
Finance and Administrative Cabinet .....	715
Real Estate Commission .....	717
Department of Fish and Wildlife Resources .....	718
Economic Development Cabinet .....	720
Workforce Development Cabinet .....	722
Labor Cabinet - Workers' Claims .....	740
Cabinet for Human Resources .....	741
Kentucky Health Policy Board .....	755
Amended After Hearing:	
Revenue Cabinet .....	761
Cabinet for Human Resources .....	767
Proposed Amendments Received Through Noon, September 15, 1995:	
Kentucky Retirement Systems .....	775
Finance and Administration Cabinet .....	779
Department of Corrections .....	783
Transportation Cabinet .....	786
Department of Housing, Buildings and Construction .....	792
Cabinet for Human Resources .....	807
Proposed Regulations Received Through Noon, September 15, 1995:	
Registry of Election Finance .....	814
Finance and Administration Cabinet .....	815
Department of Fish and Wildlife Resources .....	816
NREPC - Air Quality .....	817
Transportation Cabinet .....	821
Workforce Development Cabinet .....	825
Labor Cabinet - Workers' Compensation Funding Commission .....	826
Cabinet for Human Resources .....	831
September Minutes of the Administrative Regulation Review Subcommittee .....	833
Other Committee Reports .....	844
<b>CUMULATIVE SUPPLEMENT</b>	
Locator Index - Effective Dates .....	D2
KRS Index .....	D8
Subject Index .....	D13

### MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on October 2, 1995. See tentative agenda beginning on page 671 of this Administrative Register.

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

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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

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**ADMINISTRATIVE REGISTER - 671**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA - October 2, 1995, 10 a.m.  
Room 149, Capitol Annex**

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

**EXECUTIVE BRANCH ETHICS COMMISSION**

**Ethics Commission**

9 KAR 1:021E. Repeal of 9 KAR 1:020, Complaints. (Deferred from September)

**PERSONNEL**

**Department of Personnel**

**Classified**

101 KAR 2:100E. Leave administrative regulations. (Deferred from September)

**Unclassified**

101 KAR 3:010E. Leave administrative regulations. (Deferred from September)

**REVENUE CABINET**

**Income Tax; Corporation**

103 KAR 16:190. The unitary method of reporting for corporation income tax purposes. (Amended After Hearing) (Agency Requests Deferral to November)

**DEPARTMENT FOR MILITARY AFFAIRS**

**Disaster and Emergency Services**

106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

**GENERAL GOVERNMENT CABINET**

**Board of Hairdressers and Cosmetologists**

201 KAR 12:082. School's course of instruction.

**Board of Physical Therapy**

201 KAR 22:070. Requirements for foreign trained physical therapists.

**Kentucky Board of Certification of Marriage and Family Therapists**

201 KAR 32:010 & E. Definitions. (Deferred from September)

201 KAR 32:020 & E. Equivalent course of study. (Deferred from September)

201 KAR 32:030 & E. Fees. (Deferred from September)

**TOURISM CABINET**

**Department of Travel Development**

300 KAR 1:010. Procedure for regional marketing and matching funds program.

**Department of Agriculture**

**Livestock Sanitation**

302 KAR 20:115E. Vesicular stomatitis.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**

**Department for Environmental Protection**

**Air Quality - General Administrative Procedures**

401 KAR 50:065. Conformity of general federal actions. (Not Amended After Hearing)

**JUSTICE CABINET**

**Department of Corrections**

**Class D Felons**

501 KAR 2:020. Definitions. (Deferred from September)

501 KAR 2:040. Waivers. (Deferred from September)

501 KAR 2:050. Transfer requests. (Deferred from September)

501 KAR 2:060. Procedures for housing of Class D felons. (Deferred from September)

**Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:130. Western Kentucky Correctional Complex.

501 KAR 6:170. Green River Correctional Complex. (Deferred from September)

**Department of State Police**

**Candidate Selection**

502 KAR 45:145E. Merit Pay Program.

## **ADMINISTRATIVE REGISTER - 672**

### **TRANSPORTATION CABINET Department of Highways**

#### **Traffic**

- 603 KAR 5:070. Motor vehicle dimension limits.
- 603 KAR 5:071. Bus dimension limits.

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

#### **School Administration and Finance**

- 702 KAR 3:245E. School council allocation formula: Kentucky uniform school financial accounting system.
- 702 KAR 3:246E. School council allocation formula: KETS district administrative system chart of accounts.
- 702 KAR 3:280. School district Medicaid providers.
- 702 KAR 3:300. Approval for school district lease agreements.

#### **School Terms, Attendance and Operation**

- 702 KAR 7:010. Terms and months.

### **SCHOOL FACILITIES CONSTRUCTION COMMISSION**

#### **Procedures**

- 750 KAR 1:010. Commission procedures.

### **WORKFORCE DEVELOPMENT CABINET Department for Adult Education and Literacy**

#### **Adult Education and Literacy**

- 785 KAR 1:010. Testing program.
- 785 KAR 1:020. High school equivalency diploma.
- 785 KAR 1:030. Eighth grade equivalency certificate.
- 785 KAR 1:040. Approval of federal grants under the Adult Education Act as amended by the National Literacy Act of 1991, 20 USC 1201 et seq.
- 785 KAR 1:050. Approval of special experimental demonstration projects and adult education teacher training applications under the Adult Education Act as amended by the National Literacy Act of 1991, 20 USC 1201 et seq.
- 785 KAR 1:060. Approval of applications under English Literacy Program under the Adult Education Act as amended by the National Literacy Act of 1991, 20 USC 1201 et seq.
- 785 KAR 1:070. Approval of applications for migrant farm worker and immigrant education under the Adult Education Act, as amended by the National Literacy Act of 1991, 20 USC 1201 et seq.
- 785 KAR 1:080. Reporting requirements for adult education programs.
- 785 KAR 1:090. Approval of applications under Workplace Literacy Program under the Adult Education Act as amended by the National Literacy Act of 1991, 20 USC 1201 et seq.
- 785 KAR 1:100. Provision of instruction for individuals sentenced by a court to participate in educational programs.
- 785 KAR 1:110. Qualifications for progressing satisfactorily through a GED program.

### **Department for Employment Services**

#### **Unemployment Insurance (Deferred from September)**

- 787 KAR 1:010 & E. Application for employer account; reports.
- 787 KAR 1:020 & E. Change of status; discontinuance of business.
- 787 KAR 1:030 & E. Employer contributions.
- 787 KAR 1:040 & E. Posting notice to employees.
- 787 KAR 1:050 & E. Social Security number required of employees.
- 787 KAR 1:060 & E. Separation for cause; reports.
- 787 KAR 1:070 & E. Reasonable time for protesting claim.
- 787 KAR 1:080 & E. Labor dispute or strike; notification.
- 787 KAR 1:090 & E. Claimant's reporting requirements.
- 787 KAR 1:100 & E. Week of unemployment defined.
- 787 KAR 1:110 & E. Appeals.
- 787 KAR 1:120 & E. Fees for representing claimant.
- 787 KAR 1:130 & E. Determination defined.
- 787 KAR 1:140 & E. Unemployment insurance fund payments.
- 787 KAR 1:150 & E. Interstate claimants.
- 787 KAR 1:160 & E. Time extension for reports and notices.
- 787 KAR 1:170 & E. Cash value of board and lodging.
- 787 KAR 1:180 & E. Employer's records.
- 787 KAR 1:190 & E. Recoupment and recovery.
- 787 KAR 1:200 & E. Maximum weekly benefit rate.
- 787 KAR 1:210 & E. Employer contribution rates.
- 787 KAR 1:220 & E. Required reports and due dates.
- 787 KAR 1:230 & E. Due dates.
- 787 KAR 1:240 & E. Fraud disqualifications.
- 787 KAR 1:250 & E. Release of notice of levy.
- 787 KAR 1:260 & E. Voluntary election of coverage.



## **ADMINISTRATIVE REGISTER - 673**

787 KAR 1:270 & E. Covered employment.  
787 KAR 1:280 & E. Limitation on pension deductions.  
787 KAR 1:290 & E. Contract construction rates.  
787 KAR 1:300 & E. Successorship.  
787 KAR 1:310 & E. Claimant profiling.

### **Employment Services**

787 KAR 2:010 & E. Veterans' benefits.  
787 KAR 2:020 & E. Confidentiality of records of the Department for Employment Services.  
787 KAR 2:030 & E. Classifying a person as unemployed; appeals.

### **Department for Employment Services**

#### **Office of Training and Reemployment**

788 KAR 2:010 & E. Job Training Partnership Act.

## **LABOR CABINET**

### **Occupational Safety and Health**

803 KAR 2:320E. Adoption of 29 CFR Part 1910.1000-.1500. (Deferred from September)  
803 KAR 2:403E. Adoption of 29 CFR Part 1926.50-.66. (Deferred from September)  
803 KAR 2:425E. Adoption of 29 CFR Part 1926.1100-.1148. (Deferred from September)  
803 KAR 2:500E. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, Maritime employment. (Deferred from September)

### **Department of Workers' Claims**

803 KAR 25:150. Workers' compensation alternative dispute resolution systems.  
803 KAR 25:170. Filing of claims information with the Department of Workers' Claims.

### **Department of Alcoholic Beverage Control**

#### **Licensing**

804 KAR 4:320E. Special temporary distilled spirits and wine auction license.

## **PUBLIC PROTECTION AND REGULATION CABINET**

### **Department of Housing, Buildings and Construction**

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

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

#### **Electrical Inspectors**

815 KAR 35:030. Kentucky certification of electrical contractors.

## **CABINET FOR HUMAN RESOURCES**

### **Department for Health Services**

#### **Emergency Medical Services and Ambulance Service Providers**

902 KAR 14:080 (& E). Basic and advanced life support ground ambulance providers. (Repeals 902 KAR 20:117) (Emergency found deficient by ARRS, 7/10/95) (Amended After Hearing)  
902 KAR 14:090 (& E). Air ambulance providers. (Repeals 902 KAR 20:155) (Emergency found deficient by ARRS, 7/10/95) (Not Amended After Hearing)

### **Department for Social Insurance**

#### **Public Assistance**

904 KAR 2:460E. Summer Cooling Program.

#### **Food Stamp Program**

904 KAR 3:100. Restaurant certification for accepting food stamp coupons.

### **Department for Medicaid Services**

#### **Medicaid Services**

907 KAR 1:060E. Medical transportation. (Repeals 907 KAR 1:420)  
907 KAR 1:061E. Payments for transportation services.  
907 KAR 1:585 & E. Estate recovery.

## **KENTUCKY HEALTH POLICY BOARD**

### **Administration**

909 KAR 1:021 & E. State Health Plan.  
909 KAR 1:055 & E. Certificate of need. (Repeals 902 KAR 20:136)  
909 KAR 1:100E. Provider network certification.

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.

## REPRINT

**COMPILER'S NOTE:** When published in Volume 21 of the Kentucky Administrative Register and the 1995 bound volumes of Kentucky Administrative Regulations, the following administrative regulation, 806 KAR 9:220, was misnumbered in Section 2. This administrative regulation is being reprinted to reflect the correct numbering.

**806 KAR 9:220. Agent continuing education.**

RELATES TO: KRS 304.9-295

STATUTORY AUTHORITY: KRS 304.2-110, 304.9295

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-295 provides that the Commissioner of Insurance may, by administrative regulation, limit the number of excess continuing education credit hours accumulated during any continuing education biennium. This administrative regulation establishes procedures for approval of agent continuing education programs and obtaining credit for attending continuing education programs.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance; and

(2) "Provider" means the sponsor of a continuing education program.

Section 2. Continuing Education Program Requirements. (1)(a) A continuing education program shall not qualify for use as continuing education credit unless it is filed with and approved by the commissioner. If the continuing education program is or will be advertised as having been approved by the commissioner, it shall be filed with the commissioner at least sixty (60) days in advance of advertising unless the commissioner, in his sole discretion, waives the sixty (60) day period.

(b) Any material change in a continuing education program previously filed with and approved by the commissioner shall not be implemented until filed with and approved by the commissioner.

(c) All applications for approval of a continuing education program shall be in the form prescribed by the commissioner and shall be accompanied by an initial fee of ten (10) dollars which is deemed earned when paid and is not refundable. After review and assignment of the number of credit hours, the commissioner shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010. A continuing education program is not deemed approved until all fees are paid.

(d) In order to receive approval of the commissioner for continuing education credit pursuant to KRS 304.9-295, a continuing education program shall meet the requirements of this administrative regulation.

(2) Continuing education programs which qualify for approval for continuing education credit are those specified in KRS 304.9-295(4)(a).

(3) In order to obtain approval under subparagraphs 7, 8, and 9 of KRS 304.9-295(4)(a), a continuing education program shall meet the following requirements:

(a) The continuing education program shall contribute directly, at a professional level, to the competence of the agent or solicitor, by dealing with the following subjects:

1. Insurance, annuities and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;

7. Taxes;

8. Business environment, management, or organization; or

9. Areas other than those listed above if the agent or solicitor can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this administrative regulation whether a particular subject qualifies under this paragraph rests within the sole discretion of the commissioner.

(b) However, continuing education programs on the following subjects shall not qualify for continuing education credit:

1. Any course used to prepare for taking an insurance agent or solicitor license examination;
2. Committee service of professional organizations;
3. Computer science courses;
4. Motivational or sales training courses; and
5. Any program not in accordance with this administrative regulation.

(c) Program development and presentation:

1. The continuing education program shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;

2. The program shall be developed by persons who are qualified in the subject matter and instructional design;

3. The program content shall be current;

4. Each program shall have a written outline and study materials or texts;

5. Instructors shall meet the requirements of subsection ~~(5)~~ ~~[(6)]~~ of this section;

6. The number of participants and physical facilities shall be consistent with the teaching method specified; and

7. All programs shall include some means of evaluating quality.

(d) Continuing education programs filed for approval under this subsection shall include information showing that the instructors are qualified, through training or experience, to instruct the continuing education program competently. The commissioner may disapprove or withdraw approval of a continuing education program if an instructor does not meet the qualifications of this paragraph or has committed any of the acts prohibited by KRS 304.9-440.

~~(4)~~ ~~[(5)]~~ Correspondence courses shall be subject to the following:

(a) A correspondence course shall require successful completion of a written examination;

(b) A specific correspondence course shall be used for continuing education credit only once every continuing education biennium;

(c) Agents and solicitors shall be limited to a maximum of twelve (12) credit hours for correspondence courses per continuing education biennium; and

(d) A correspondence course shall not be approved for continuing education credit of more than twelve (12) hours.

~~(5)~~ ~~[(6)]~~ The commissioner may withdraw approval of a continuing education program for any of the following reasons:

(a) The continuing education program teaching methods or program content no longer meet the requirements of KRS 304.9-295 or this administrative regulation or have been materially changed without filing with or approval by the commissioner;

(b) The continuing education program provider has certified to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has not done so;

(c) The continuing education program provider fails to certify to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has done so; or

(d) There is other good and just cause to withdraw approval of a continuing education program.

~~(6)~~ ~~[(7)]~~ Providers shall renew approval of continuing education programs at the end of each continuing education biennium. At least

sixty (60) days prior to the end of each continuing education biennium, the commissioner shall mail or deliver to each provider renewal information. Providers shall file renewal information with and pay the renewal fee specified in 806 KAR 4:010 to the commissioner no later than the end of the continuing education biennium.

application or appointment for a license, and has paid the required licensing fees. (17 Ky.R. 803; eff. 10-14-90; Am. 18 Ky.R. 803; eff. 11-8-91; 21 Ky.R. 2797; 22 Ky.R. 58; eff. 7-6-95.)

Section 3. Measurement of Credit. Continuing education programs shall be credited for continuing education purposes in full hours, as the commissioner deems appropriate. In order to have assigned to it one hour of continuing education credit, each hourly period of a continuing education program shall include at least fifty (50) minutes of continuous instruction or participation. For the purposes of this section, a one day continuing education program shall be granted eight (8) hours credit if the total elapsed time is approximately eight (8) hours and the program includes at least 400 minutes of classroom instruction or participation.

Section 4. Proof of Completion. (1) Upon completion of a continuing education program, the provider shall certify to the commissioner the names of all agents or solicitors who satisfactorily completed the continuing education program. The certification of completion required by this section shall be in the form prescribed by the commissioner.

(2) The certificate of completion shall be completed in triplicate for each agent or solicitor attending. The original shall be mailed by the provider to the department within thirty (30) days after the continuing education course is completed. The department shall accept only originals. The provider of the continuing education program shall furnish to the agent or solicitor attending the program a copy of the certificate and the agent or solicitor shall retain a copy of the certificate for at least three (3) years. The provider of the continuing education program shall retain a copy of the certificate for at least three (3) years. Providers of continuing education programs, agents, and solicitors, shall make available to the commissioner or his designee copies of certificates upon the request of the commissioner.

(3) Pursuant to KRS 304.9-295(8), every agent shall be responsible for insuring that his continuing education certificates of completion are timely filed with the department.

Section 5. Carry Forward of Excess Credit Hours. Agents or solicitors may carry forward credit hours in excess of twenty-four (24) hours from a previous continuing education biennium. The number of excess credit hours carried forward pursuant to this section shall be limited to twelve (12).

Section 6. Lists of Approved Continuing Education Programs. The commissioner shall provide, upon written request accompanied by a fee of five (5) dollars pursuant to 806 KAR 4:010, a list of all continuing education programs which the commissioner has approved and the providers of those programs.

Section 7. Cancellation and Reinstatement of Licenses. (1) If the department does not receive proof of the fulfillment of an agent's continuing education requirements on or before July 30 in even numbered years, the commissioner shall cancel the agent's license. The commissioner shall notify a licensee and the licensee's sponsoring agent or insurer of cancellation of license for failure to comply with continuing education requirements. The notice shall be in writing and mailed to the resident address of the licensee on file with the commissioner and if that notice is returned as undeliverable the notice shall be sent to the business address of the licensee on file with the commissioner. Notices to sponsoring agents and insurers shall be mailed to their mailing addresses on file with the commissioner.

(2) Reinstatement of prior license or issuance of a new license shall be granted only after the licensee has satisfied the continuing education requirement for which the licensee is delinquent, caused to be filed the appropriate certificate of completion, filed the required

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

COUNCIL ON HIGHER EDUCATION

Date: September 13, 1995

Council on Higher Education

(1) The subject matter of the proposed amendment to the state administrative regulation is the "Determination of residency status for admission and tuition assessment purposes" which is currently titled "Classification of residency for admission and tuition purposes" which is currently titled "Classification of residency for admission and tuition assessment purposes" (13 KAR 2:045).

(2) The Council on Higher Education is charged by KRS 164.020 and 164.03 with the responsibility for determining tuition and establishing admissions standards, respectively. Pursuant to those statutory charges, 13 KAR 2:045 establishes the basis on which Kentucky residency can be determined. Residency status is significant both for admissions and tuition assessment. The proposed amendments will reorganize the state administrative regulation to take advantage of recent court and adjudicatory decisions as well as conform the administrative regulation to the requirements of KRS Chapter 13B.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 30, 1995, at 10 a.m., in the conference room, Council on Higher Education, 1024 Capital Center Drive, Suite 320, 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 five (5) persons, or an administrative body or association, request this public hearing and agree in writing to be present at the 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 calendar days prior to October 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request no later than October 10, 1995, to the following address: Council on Higher Education, Attn: Kenneth Walker, Deputy Executive Director for Finance, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601. The phone number is (502) 573-1555, the fax number is (502) 573-1535.

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

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

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

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

(7) The following information relates to the proposed administrative regulation:

(a) The statutory authorities for the promulgation of an administrative regulation relating to a determination of residency status for admission and tuition assessment purposes are KRS 164.020 and 164.030.

(b) The state administrative regulation the council intends to promulgate is an amendment to 13 KAR 2:045 concerning a determination of residency status for admission and tuition assessment purposes. The amendments will reorganize and restructure the administrative regulation, will alter definitions and criteria for evaluation of residency status which recognize recent court cases and adjudicatory rulings, and will conform the administrative regulation to KRS Chapter 13B.

(c) The necessity and function of the proposed administrative regulation is as follows: Recent court rulings and adjudicatory decisions of appeals on residency issues make changes in definitions and criteria for determining residency necessary. The appeals process needs to conform to the requirements of KRS Chapter 13B and that change must be made by July 1996.

(d) The benefits expected from administrative regulation are: A better organized and effective state administrative regulation which simplifies the implementation of residency reviews for both institutions and students.

(e) The administrative regulation will be implemented as follows: By the eight public universities and the University of Kentucky Community College System and the Council on Higher Education.

DEPARTMENT OF STATE  
Registry of Election Finance

Date: August 30, 1995

Department of State

Registry of Election Finance

(1) 32 KAR 1:160, Reporting of joint in-kind donations.

(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 October 30, 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 October 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: 140 Walnut Street, Frankfort, Kentucky 40601.

## ADMINISTRATIVE REGISTER - 678

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 judge panel hearings is KRS 121.120(1)(g) and 121A.020(7).

(b) The administrative regulation that the Registry of Election Finance intends to promulgate will replace 32 KAR 1:160E.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 121A.010(11)(3) and (4) exclude from the definition of "contribution" in-kind goods or services with a value of \$100 or less. This exemption, which was designed to encourage participation of individuals through the donation of small items such as food, signs, etc., creates an avenue through which the expenditure limits applicable to gubernatorial slates may be circumvented. It is therefore necessary to promulgate this administrative regulation to provide some degree of accountability and reporting by individuals who pool their resources to provide in-kind goods or services to a gubernatorial slate.

(d) The benefits expected from administrative regulation are: This administrative regulation will provide some degree of accountability and reporting by individuals who pool their resources to provide in-kind goods or services to a gubernatorial slate.

(e) The administrative regulation will be implemented as follows: The general counsel for the Registry of Election Finance will coordinate the implementation of this administrative regulation.

## DEPARTMENT OF FISH AND WILDLIFE RESOURCES

Date: August 16, 1995

Tourism Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:225**, Dove, wood duck, teal and other migratory game bird hunting.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 30, 1995, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing migratory bird hunting is KRS 150.015, 150.170, 150.320, 150.340 and 150.360.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will replace and repeal 301 KAR 2:044. The only substantive changes from 301 KAR 2:044 are changes in opening and closing dates to reflect calendar shifts. Promulgation of a new administrative regulation is necessary because of extensive wording and format changes necessary to comply with the provisions of KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is to establish hunting seasons, limits and other regulations for migratory birds within frameworks set by the United States Fish and Wildlife Service.

(d) The benefits expected from the administrative regulation are permitting the controlled harvest of renewable natural resources and conservation of migratory game bird populations.

(e) The administrative regulation will be implemented as follows: Its provisions will be communicated to the hunting public through brochures and media releases, and enforced by the Department of Fish and Wildlife Resources' Division of Law Enforcement.

## ADMINISTRATIVE REGISTER - 679

### TOURISM CABINET Department of Fish and Wildlife Resources

Date: September 14, 1995

Tourism Cabinet

Department of Fish and Wildlife Resources

- (1) Regulation Number and Title: **301 KAR 5:001**, Definitions; **301 KAR 5:010**, License agent selection criteria.
- (2) The Department of Fish and Wildlife Resources intends to promulgate the administrative regulations cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 30, 1995, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 20 days prior to October 30, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.
- (b) On the request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing"; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of administrative regulations governing license sale agents is KRS 150.195.
  - (b) The administrative regulations that the department intends to promulgate will not amend an existing administrative regulation. 301 KAR 5:001 will define the terms used in regulations concerning licensing agents. 301 KAR 5:010 will establish criteria for selecting the various kinds of agents to sell hunting and fishing licenses and permits, and will specify application procedures and requirements.
  - (c) The necessity and function of the proposed administrative regulations are, as required by KRS Chapter 150, to establish (1) the number and distribution of license agents in each county and (2) the requirements for persons, other than county clerks, to sell licenses and permits for the department.
  - (d) The benefits expected from these administrative regulations are standardized agent selection criteria and an appropriate number of license agents in each county; and uniform responsibilities and requirements for becoming a license agent.
  - (e) The administrative regulations will be implemented as follows: Prospective agents will apply to the department and be selected based on criteria established by this regulation.

### DEPARTMENT OF AGRICULTURE

Date: August 28, 1995

Department of Agriculture

- (1) **302 KAR 20:081** repeals 302 KAR 20:080, Swine.
- (2) The Department of Agriculture intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 30, 1995, at 10 a.m. at Capital Plaza Tower, 7th Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to October 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: Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 20:081 is KRS Chapter 257.
  - (b) The administrative regulation that the Department of Agriculture intends to promulgate will repeal 302 KAR 20:080 and is a new administrative regulation. It will repeal 302 KAR 20:080, Swine, as hog cholera is no longer a threat to livestock.
  - (c) The necessity and function of the proposed administrative regulation is as follows: The same as (b).
  - (d) The benefits expected from administrative regulation are: This administrative regulation furthers Kentucky health and disease control initiatives for livestock.
  - (e) The administrative regulation will be implemented as follows:

## ADMINISTRATIVE REGISTER - 680

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

Date: October 1, 1995

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

(1) The subject matter of **401 KAR 50:034**, Permit application form, is the incorporation by reference of the permit application forms required for use by air contaminant sources in Kentucky. The proposed amendments to this regulation will, upon adoption, 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 application forms. These amendments will 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 October 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. 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 October 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 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 administrative regulation that the Division for Air Quality intends to promulgate will amend an existing administrative regulation, 401 KAR 50:034. 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 50:034 by using the amended application forms incorporated by reference therein.

Date: October 1, 1995

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

(1) The subject matter of the amendments to the following six administrative regulations is a revision to the definition of volatile organic compound. The six administrative regulations are:

**401 KAR 50:010.** Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

**401 KAR 51:001.** Definitions and abbreviations of terms used in Title 401, Chapter 51.

**401 KAR 59:001.** Definitions and abbreviations of terms used in Title 401, Chapter 59.

**401 KAR 61:001.** Definitions and abbreviations of terms used in Title 401, Chapter 61.

**401 KAR 63:001.** Definitions and abbreviations of terms used in Title 401, Chapter 63.

**401 KAR 65:001.** Definitions and abbreviations of terms used in 401 KAR Chapter 65.

(2) The Division for Air Quality intends to promulgate an amendment to the six administrative regulations governing the subject matter listed



## ADMINISTRATIVE REGISTER - 681

above.

(3) A public hearing to receive oral and written comments on the amended administrative regulations has been scheduled for October 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 October 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 amendments to administrative regulations.

(a) The statutory authority for the promulgation of the administrative regulations relating to the definition of volatile organic compound is KRS 224.10-100.

(b) The administrative regulations that the Division for Air Quality intends to promulgate will amend the six existing air quality regulations that follow:

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

401 KAR 51:001. Definitions and abbreviations of terms used in Title 401, Chapter 51.

401 KAR 59:001. Definitions and abbreviations of terms used in Title 401, Chapter 59.

401 KAR 61:001. Definitions and abbreviations of terms used in Title 401, Chapter 61.

401 KAR 63:001. Definitions and abbreviations of terms used in Title 401, Chapter 63.

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65.

(c) The necessity and function of the proposed amendments to the 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. These administrative regulations provide for the defining of terms to be used in 401 KAR Chapters 50 to 65. The Division for Air Quality is amending the definition for volatile organic compound to be compatible with the federal definition.

(d) The benefit expected from the amendment to the administrative regulations is that the definition for volatile organic compound will be compatible with the federal definition.

(e) The administrative regulations will be implemented as follows: On and after the effective date of the amendments, the regulations in 401 KAR Chapters 50 to 65 will use the amended definition of volatile organic compound.

## PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

Date: August 16, 1995

Petroleum Storage Tank Environmental Assurance Fund Commission

(1) Subject Matter: **415 KAR 1:114**, Contractor certification. The subject matter of the proposed amended administrative regulation is the requirements imposed on environmental contractors to receive certification to be eligible for reimbursement of corrective action cost from the fund.

(2) The Petroleum Storage Tank Environmental Assurance Fund Commission 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 proposed amended administrative regulation has been scheduled for October 27, 1995, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

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

1. It is requested, in writing, by at least five people, or by an administrative body, or association, having at least five 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 October 27, 1995, 1:30 p.m. EDT, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Counsel for the Commission, 911 Leawood Drive, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Petroleum Storage Tank Environmental Assurance Fund Commission at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to contractor certification is found in KRS 224.60-130(2)(a).

(b) The administrative regulation that the commission intends to promulgate will amend the existing regulation by removing the requirement

## ADMINISTRATIVE REGISTER - 682

that a certified contractor be physically on site for all corrective action activities, require that all reimbursed money paid by the commission be for work that is necessary and reasonable, and provide a procedure to revoke or suspend a certification.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.60-130(a) requires the commission to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This amendment will allow the commission to better serve its constituency by easing restrictions on the physical availability of the certified individual, clarifying what cost will be reimbursable, and protecting the public by allowing for the removal of certifications.

(d) The benefits expected from the administrative regulation is to lessen the cost of corrective action to the petroleum storage tank owner or operator by not requiring the presence of a certified individual at all times, to insure that all cost paid by the commission meet the statutory requirements of being necessary and reasonable, and to provide appropriate procedures to revoke or suspend a certification.

(e) The proposed administrative regulation will be implemented by allowing owners to seek reimbursement of cost that were not allowed or unclear as to their eligibility for reimbursement.

### JUSTICE CABINET Department of Corrections

Date: September 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, inmate grievance procedure, meritorious good time, restoration of forfeited good time, assessment center operations, inmate conflicts, parole progress reports, referral procedure for inmates adjudicated guilty but mentally ill, protective custody, inmate furloughs, community center program.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. 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. 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.

5. Meritorious good time (15.3) shall be amended to clarify the procedure for recommendations for awards of meritorious good time.

6. 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.

7. Assessment center operations (17.2) shall be amended to reflect the current practice of reporting operational matters to the warden.

8. Inmate conflicts (18.3) shall be added to reflect the procedure for investigating and documenting conflicts between inmates.

9. Parole progress reports (18.10) shall be amended to clarify the procedure for sending information to the Parole Board.

10. 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.

11. Protective custody (18.15) shall be amended to reflect current procedures for classification of inmates to protective custody.

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

13. Community center program (25.6) shall be amended to revise the stipulations for furloughs.

(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.

## ADMINISTRATIVE REGISTER - 683

Date: September 13, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:090**, Frankfort Career Development Center: institutional entry and exit surveillance and perimeter security procedures; menu, nutrition and special diets; inspection and sanitation; purchasing and storage of food products.

(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 October 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 October 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 6:090, as follows:

1. Institutional entry and exit surveillance and perimeter security procedures (09-01-02) shall be amended to designate duties and responsibilities for the Central Control Center Unit.

2. Menu, nutrition and special diets (11-04-02) shall be created to establish guidelines for the food service operations manager concerning menus, nutrition and special diets.

3. Inspection and sanitation (11-06-01) shall be established to ensure inspection and sanitation of the food service areas.

4. Purchasing and storage of food products (11-07-01) shall be created to establish guidelines for the purchase and storage of food products utilized at FCDC.

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

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

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

Date: September 13, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex: food service meals, menus, nutrition and special diets; hair and grooming standards.

(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 October 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 October 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 6:130, as follows:

1. Food service meals, menus, nutrition and special diets (11-03-01) shall be amended with minor corrections for clarity.

2. Hair and grooming standards (15-01-01) shall be amended to reflect minor changes throughout the policy.

## ADMINISTRATIVE REGISTER - 684

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

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

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

Date: September 13, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:140**, Bell County Forestry Camp: public information and news media access; sick call and physician's weekly clinic; inmate medical screening and health evaluation; medical emergencies and medical or psychiatric transfers; use of pharmaceutical products; academic school; social services and counseling program.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:140, as follows:

1. Public information and news media access (01-08-01) shall be amended to reflect the duties of the public information officer at BCFC, and to comply with 3rd edition ACA Standards.

2. Sick call and physician's weekly clinic (13-02-01) shall be amended to reflect utilization of physician's assistant during weekly clinic and sick call, and removal of references to the segregation unit at BCFC.

3. Inmate medical screening and health evaluation (13-04-01) shall be amended to reflect current procedures in place, and the disposition of initial screening of inmates at BCFC.

4. Medical emergencies and medical or psychiatric transfers (13-05-01) shall be amended to reflect the current locations of first aid kits, and removal of references to the segregation unit at BCFC.

5. Use of pharmaceutical products (13-14-01) shall be amended to remove references to administrative segregation from the policy.

6. Academic school (20-01-01) shall be amended to reflect the establishment of goals, and the programs currently offered at BCFC.

7. Social services and counseling program (24-01-01) shall be amended to reflect current types of programs available at BCFC.

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

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

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

Date: September 13, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:170**, Green River Correctional Complex: fiscal management accounting procedures; fiscal management agency funds; fiscal management insurance; fiscal management budget; fiscal management audits; inmate canteen; employee grievance and EEO complaint procedure; employee training and staff development; offender records; inmate rights and responsibilities; legal services program; GRCC adjustment program and procedures; library services; recreation programs; inmate organizations; social services and counseling program.

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

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

## ADMINISTRATIVE REGISTER - 685

hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. Fiscal management accounting procedures (02-01-02) shall be established to outline the accounting procedures for the Fiscal Management Office at the Green River Correctional Complex.

2. Fiscal management agency funds (02-01-03) shall be established to outline the fiscal management agency funds at the Green River Correctional Complex.

3. Fiscal management: insurance (02-01-04) shall be established to outline the insurance provided at the Green River Correctional Complex.

4. Fiscal management: budget (02-02-01) shall be established to outline the budget process at the Green River Correctional Complex.

5. Fiscal management: audits (02-03-01) shall be established to outline the guidelines for fiscal management audits at the Green River Correctional Complex.

6. Inmate canteen (02-06-01) shall be established to outline the guidelines of the inmate canteen operation at the Green River Correctional Complex.

7. Employee grievance and EEO complaint procedure (03-04-01) shall be established to outline the operating procedure for employees to file a grievance or EEO complaint at the Green River Correctional Complex.

8. Employee training and staff development (04-01-01) shall be established to outline the training program at the Green River Correctional Complex.

9. Offender records (06-01-01) shall be established to outline the guidelines for the offender records operation at the Green River Correctional Complex.

10. Inmate rights and responsibilities (14-01-01) shall be established to outline the rights and responsibilities of inmates at the Green River Correctional Complex.

11. Legal services program (14-02-01) shall be established to outline the legal services program at the Green River Correctional Complex.

12. Adjustment program and procedures (15-01-01) shall be established to outline the adjustment program operation at the Green River Correctional Complex.

13. Library services (21-01-01) shall be established to outline guidelines for the library services program at the Green River Correctional Complex.

14. Recreation programs (22-01-01) shall be established to outline the guidelines for the recreation program for inmates at the Green River Correctional Complex.

15. Inmate organizations (22-02-01) shall be established to outline the guidelines for inmate organizations at the Green River Correctional Complex.

16. Social services and counseling program (24-01-01) shall be established to outline the guidelines for the social services and counseling program at the Green River Correctional Complex.

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

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

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

## DEPARTMENT OF STATE POLICE

Date: August 29, 1995

Department of State Police

(1) 502 KAR 45:005 - Definitions.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT).

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

## ADMINISTRATIVE REGISTER - 686

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:015** - Qualifications.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:025** - Disqualification.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily

## ADMINISTRATIVE REGISTER - 687

complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:035** - Application.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:045** - Written examination.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:055** - Oral interview.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

## ADMINISTRATIVE REGISTER - 688

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:065** - Background investigation.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:075** - Register.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.



## ADMINISTRATIVE REGISTER - 689

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:085** - Medical examination.

(2) The Department of State Police intends to amend the administrative regulation cited above to include a definition for Content Based Task Test (CBTT) and provide other required changes.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to amend is a current regulation and the amendment coincides with a new regulation providing for a Content Based Task Test (CBTT).

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

Date: August 29, 1995

Department of State Police

(1) **502 KAR 45:150** - Content Based Task Test (CBTT).

(2) The Department of State Police intends to promulgate the administrative regulation cited above to include a Content Based Task Test (CBTT) in the cadet trooper selection process.

(3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for October 27, 1995, at 10 a.m., at 919 Versailles Road, 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 five (5) days prior to October 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention - Jean Ann Gabbard, Personnel Manager.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 State Police at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 16.050 and 16.080.

(b) The administrative regulation that the Kentucky State Police intends to promulgate is a new regulation. It will provide for a task test in

## ADMINISTRATIVE REGISTER - 690

the cadet trooper selection process.

(c) The necessity and function of the proposed administrative regulation is as follows: To require new cadet applicants to satisfactorily complete a physical ability test prior to selection.

(d) The benefits expected from this amended regulation are: To allow the department to assess the ability of applicants to perform the job requirements of cadet troopers.

### CABINET FOR WORKFORCE DEVELOPMENT Department of Vocational Rehabilitation

Date: September 1, 1995

Cabinet For Workforce Development

Department of Vocational Rehabilitation

(1) Regulation Number and Title: **781 KAR 1:020**, General provisions for operation of the Department of Vocational Rehabilitation.

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation 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 October 31 1995, at 10 a.m., in the DVR Training Room, 209 Saint Clair 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 meeting.

(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 public hearing is not received from the required number of people at least 20 days prior to October 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: Department for Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department for Vocational Rehabilitation 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 vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:020 as follows: A new paragraph (2) will be added that will restrict referral for application from incarcerated individuals if participation in a vocational rehabilitation program is a condition of probation or parole.

(c) The necessity and function of the proposed administrative regulation is: Sections 101(a)(29) and 102(b)(1)(B)(iii) of the 1992 Amendments to the Rehabilitation Act (29 USC 791) requires that individuals be given choices in the joint development of individualized written rehabilitation programs. It is imperative that the counseling relationship be preserved when assisting eligible individuals to make informed choices in developing those rehabilitation programs. Without joint involvement, the rehabilitation programs will be unlikely to succeed. To admit individuals as a condition of probation or parole would place department staff in the untenable position of monitoring compliance and would destroy the counseling relationship. Additionally, the department would be duplicating the services of the Department of Corrections.

(d) The benefits expected from administrative regulation are: Affected applicants and eligible individuals will have access to needed assessment and vocational preparation services after conditions of probation or parole have been met. Service duplication will be avoided and the integrity of the counseling relationship can be preserved.

(e) The administrative regulation will be implemented as follows: Applicants and eligible individuals who have satisfactorily met the conditions of probation or parole will be considered for assessment and vocational preparation services as appropriate.

Date: September 1, 1995

Cabinet For Workforce Development

Department of Vocational Rehabilitation

(1) Regulation Number and Title: **781 KAR 1:050**, Carl D. Perkins Comprehensive Rehabilitation Center.

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation 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 October 31 1995, at 10 a.m., in the DVR Training Room, 209 Saint Clair 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 meeting.

(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 public hearing is not received from the required number of people at least 20 days prior to October 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: Department for Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

## ADMINISTRATIVE REGISTER - 691

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file 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 for Vocational Rehabilitation 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 vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:050 as follows: A new paragraph (4) will be added that will restrict admission to any program at the Carl D. Perkins Rehabilitation Center if admission is a condition of probation or parole.

(c) The necessity and function of the proposed administrative regulation is: Sections 101(a)(29) and 102(b)(1)(B)(iii) of the 1992 Amendments to the Rehabilitation Act (29 USC 791) requires that individuals be given choices in the joint development of individualized written rehabilitation programs. It is imperative that the counseling relationship be preserved when assisting eligible individuals to make informed choices in developing those rehabilitation programs. Without joint involvement, the rehabilitation programs will be unlikely to succeed. To admit individuals as a condition of probation or parole would place department staff in the untenable position of monitoring compliance and would destroy the counseling relationship. Additionally, the department would be duplicating the services of the Department of Corrections.

(d) The benefits expected from administrative regulation are: Applicants and eligible individuals will have access to needed assessment and vocational preparation services at the rehabilitation center after conditions of probation or parole have been met. Service duplication will be avoided and the integrity of the counseling relationship can be preserved.

(e) The administrative regulation will be implemented as follows: Applicants and eligible individuals who have satisfactorily met the conditions of probation or parole will be considered for assessment and vocational preparation services as appropriate.

### LABOR CABINET Department of Workers' Claims

Date: September 14, 1995

Labor Cabinet

Department of Workers Claims

(1) Regulation Number and Title: **803 KAR 25:010**, Procedure for adjustments of claims.

(2) The Commissioner of the Department of Workers Claims intends to amend the administrative regulation cited above.

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

(5)(a) Persons wishing to request a hearing should mail their written request to the following address: Department of Workers Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Valerie L. Salven, General Counsel.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to practice and procedure before the administrative law judges and the Workers Compensation Board is KRS 342.260.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:010 as follows: This amendment will revise the forms incorporated by reference in Section 26 of 803 KAR 25:010. In addition, typographical errors in the present regulation will be corrected. For instance, Section 13(1) refers to Section 1(4) for the definition of filing instead of Section 1(5).

(c) The necessity and function of the proposed administrative regulation is as follows: To simplify the forms, and to arrange information on the forms in a manner that will expedite data entry into the Department of Workers Claims computer database.

(d) The benefits expected from administrative regulation are: More efficient processing of applications for adjustment of claims by the Department of Workers Claims.

(e) The administrative regulation will be implemented as follows: New forms will be drafted and printed for distribution to the public, and completed forms produced on word-processing equipment will be accepted if the approved format is used. Typographical errors in the present 803 KAR 25:010 will be corrected.

## ADMINISTRATIVE REGISTER - 692

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

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

- (1) **904 KAR 3:041.** Food Stamp Employment and Training Program.
- (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 October 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 October 31, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, by writing to the Cabinet for Human Resources, 275 East Main Street, 3rd Floor West, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the Food Stamp Employment and Training Program is KRS 194.050 and 7 CFR 273.7.
- (b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:041, Food Stamp Employment and Training Program to correct a deficiency found by the Interim Joint Committee on Health and Welfare on March 15, 1995. The deficiency was as a result of adding an age factor to the priority status criteria listed in Section 3(2). We are removing that age factor with this amendment.
- (c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment will remove the age factor from the priority status criteria listed in Section 3(2) of this administrative regulation.
- (d) The benefits expected from administrative regulation are: These provisions are necessary to correct the deficiency.

### Department for Mental Health and Mental Retardation Services

Date: September 15, 1995  
Cabinet for Human Resources  
Department for Mental Health and Mental Retardation Services

- (1) **908 KAR 1:340.** Kentucky Narcotic Treatment Program.
- (2) The Department for Mental Health and Mental Retardation Services intends to promulgate an administrative regulation governing narcotic treatment programs in Kentucky.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for October 31, 1995, at 9 a.m. in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort KY 40621.
- (4)(a) The public hearing will be held if:
  1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to October 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, 4th Floor West, Frankfort KY 40621, (502) 564-7900.
- (b) On a request for a public hearing, a persons shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department of Mental Health and Mental Retardation Services, Division of Administration and Financial Management, Frankfort KY 40621.
- (c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in

## ADMINISTRATIVE REGISTER - 693

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 this administrative regulation is KRS 194.050 and 222.231.

(b) This administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will not amend an existing administrative regulation. The primary purpose of this administrative regulation is to establish greater consistency in program operation policies across narcotic treatment programs. This administrative regulation proposes specific program policy requirements that will be common across all programs in the areas of licensing of narcotic treatment programs, admissions, readmissions, treatment phases, program infractions, program transfers, medication fees, mechanism for client appeal, and procedures for seeking waivers from regulatory requirements.

(c) The necessity and function of this proposed regulation is as follows: Authorize the Cabinet for Human Resources to establish guidelines and provide for the systematic evaluation of effectiveness of narcotic treatment programs and establish the State Narcotic Authority with the director of Substance Abuse Services within the Department for Mental Health and Mental Retardation Services.

(d) The benefits expected from this administrative regulation are to establish greater consistency in program operation policies and outline specific program policy requirements that will be common across all programs.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY  
32 KAR 1:160E

KRS 121A.010(11)(a)(3) and (4) exclude from the definition of "contribution" in-kind goods or services with a value of \$100 or less. This exemption, which was designed to encourage participation of individuals through the donation of small items such as food, signs, etc., creates an avenue through which the expenditure limits applicable to gubernatorial slates may be circumvented. It is therefore necessary to promulgate this emergency administrative regulation to provide some degree of accountability and reporting by individuals who pool their resources to provide in-kind goods or services to a gubernatorial slate. An ordinary administrative regulation shall be filed with the Regulations Compiler to replace this emergency administrative regulation.

BRERETON JONES, Governor  
JOSEPH H. TERRY, Chair

DEPARTMENT OF STATE  
Registry of Election Finance

32 KAR 1:160E. Reporting of joint in-kind donations.

RELATES TO: KRS 121A.010(10), (11)(a), 121A.050(1)  
STATUTORY AUTHORITY: KRS 121.120(1)(g), 121A.020(7)  
EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 121A.010(11)(a)(3) and (4) exclude from the definition of "contribution" in-kind goods or services with a value of \$100 or less. This exemption, which was designed to encourage participation of individuals through the donation of small items such as food, signs, etc., creates an avenue through which the expenditure limits applicable to gubernatorial slates may be circumvented. It is therefore necessary to promulgate this emergency administrative regulation to provide some degree of accountability and reporting by individuals who pool their resources to provide in-kind goods or services to a gubernatorial slate.

Section 1. A group of individuals which shares the cost associated with the purchase of or payment for goods, advertising, or services for the benefit of a slate of candidates shall report to the registry as a contributing organization as required by KRS 121A.010(10) and shall be bound by the contribution limits established by KRS 121A.050(1) for contributing organizations.

Section 2. Nothing in this administrative regulation shall be construed to restrict the right of an individual to make a bona fide independent expenditure as defined by KRS 121.150(1).

JOSEPH H. TERRY, Chair

APPROVED BY AGENCY: August 16, 1995  
FILED WITH LRC: August 30, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative

regulation affects persons who pool in-kind individual donations of \$100 or less made for the benefit of slates of candidates for governor and lieutenant governor.

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

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

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

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

1. First year following implementation: A group of individuals sharing the costs associated with the purchase of or payment of goods, advertising, or services for the benefit of a slate of candidates will be required to report to the registry as a contributing organization.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The only cost associated with this administrative regulation will be staff time required to process reports.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Costs associated with this administrative regulation will increase or decrease in direct proportion to the number of reports filed.

(b) Reporting and paperwork requirements: Staff time will be utilized in processing reports filed and in processing complaints or actions brought before the registry as a result of those reports.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding will come from agency general fund appropriations.

(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: Within current statutory provisions, this administrative regulation reflects the registry's best opportunity to require some accountability for in-kind donations made under the conditions outlined in the administrative 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: None

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: The registry intends to request the 1996 General Assembly to amend current law or to

enact new provisions to provide a statutory mechanism through which donations of this type will be reported.

(11) TIERING: Is tiering applied? Tiering is not applied because the provisions of KRS 121A.010(10) and (11)(a) and 121A.050(1) apply uniformly.

STATEMENT OF EMERGENCY  
301 KAR 2:225E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor  
C. THOMAS BENNETT, Commissioner

TOURISM CABINET  
Department of Fish and Wildlife Resources

301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting.

RELATES TO: KRS 150.015, 150.025, 150.170, 150.300, 150.320, 150.330, 150.340, 150.360, 150.603  
STATUTORY AUTHORITY: KRS 150.015, 150.170, 150.320, 150.340, 150.360

EFFECTIVE: August 23, 1995

NECESSITY AND FUNCTION: To allow the taking of migratory birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service. This administrative regulation contains the substance of 301 KAR 2:044, which it replaces. Substantive changes from 301 KAR 2:044 consist of date changes to reflect calendar shifts.

Section 1. Definitions. (1) "Migratory game birds" means mourning dove, wood duck, teal, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, and sora rail.

(2) "Teal" means green-winged teal, blue-winged teal, and cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) Doves: September 1 through September 30; October 7 through October 30; and November 23 through November 28.

(2) Woodcock: October 14 through December 17.

(3) Common snipe: September 13 through October 27 and November 23 through January 23.

(4) Wood duck and teal: September 13 through September 17.

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

Section 3. Bag and possession limits. Persons shall not exceed the following limits:

(1) Doves: daily limit, fifteen (15); possession limit, thirty (30).

(2) Woodcock: daily limit, five (5); possession limit, ten (10).

(3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

(4) Virginia rails and sora rails, singly or in the aggregate: daily

and possession limit, twenty-five (25).

(5) Common moorhen and purple gallinules singly or in the aggregate: daily limit, fifteen (15); possession limit, thirty (30).

(6) Wood duck and teal: daily limit, four (4), shall not include more than two (2) wood ducks; possession limit, eight (8), shall not include more than four (4) wood ducks.

(7) For identification purposes, persons shall leave the head or one (1) fully feathered wing attached to migratory game birds, except doves, being held in the field or transported.

Section 4. Shooting Hours. Persons may take:

(1) Doves:

(a) From 11 a.m. until sunset during the September and October portions of the season; and

(b) From sunrise to sunset during the November portion of the season.

(2) Other species listed in this administrative regulation, from one-half (1/2) hour before sunrise to sunset.

Section 5. Shot Requirements. Persons hunting wood ducks or teal shall not use or possess shotgun shells:

(1) Longer than three and one-half (3 1/2) inches: or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. (1) On wildlife management areas owned or controlled by the department:

(a) Unless excepted below, all sections of this administrative regulation apply.

(b) Persons shall not:

1. Hunt wood ducks or teal on areas closed to waterfowl hunting by 301 KAR 2:222.

2. Hunt in areas marked by signs as closed to hunting

3. Enter areas marked by signs as closed to the public.

(2) Persons hunting doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River and Westvaco Wildlife Management Areas shall not use or possess shotgun shells containing lead shot.

(3) Ballard Wildlife Management Area.

(a) Persons shall not hunt migratory birds after October 13, except as provided in 301 KAR 2:221.

(b) Dove hunters shall not carry firearms except during shooting hours.

(4) Central Kentucky Wildlife Management Area. Persons shall not hunt migratory birds after October 13, except as provided in 301 KAR 2:222.

(5) Grayson Lake Wildlife Management Area.

(a) Migratory bird hunters shall check in and out daily at designated check stations.

(b) Persons shall not hunt:

1. Within the no wake zone at the dam site marina;

2. On Deer Creek Fork; or

3. On or from the shores of Camp Webb or the State Park.

(6) Land Between the Lakes. Persons shall not hunt doves, woodcock or common snipe between the last Saturday in September and November 30.

(7) West Kentucky Wildlife Management Area.

(a) Persons shall not hunt doves after October 13, except on tracts 2, 3, 6, and 7 during the November portion of the season.

(b) Persons shall not hunt woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) Persons shall not hunt on tracts designated by numbers followed by the letter "A".

## ADMINISTRATIVE REGISTER - 696

(8) Yatesville Lake Wildlife Management Area. Migratory bird hunters shall check in and out daily.

(9) Persons shall not hunt migratory birds on the main block of Robinson Forest.

Section 7. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for dove hunting fields on department property after considering the following:

- (a) Terrain of fields;
  - (b) Topography of fields;
  - (c) Providing for approximately forty (40) yards between hunters.
- (2) Strategically located signs shall be posted in fields advising hunters:
- (a) Of recommended hunter densities;
  - (b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.
- (3) Hunters behaving in an unsafe or uncooperative manner shall be required to leave the premises.

Section 8. 301 KAR 2:044 is repealed.

C. THOMAS BENNETT, Commissioner  
GREG GINTER, Secretary  
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 9, 1995

FILED WITH LRC: August 23, 1995 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Don Walker

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. U.S. Fish and Wildlife Service approved nontoxic shot is required for all waterfowl hunting. Approved nontoxic shot costs approximately \$2 to \$7 more per box of 25 shells, dependent on shot material selected, than does lead shot.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no anticipated impact on the cost of doing business.

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

1. First year following implementation: Persons participating in the hunting proposed for authorization by this administrative regulation are required to possess a valid hunting license (\$12.50 for residents) unless exempt by administrative regulations. Waterfowl hunters are required to possess, a \$15 federal migratory bird hunting and conservation stamp and a \$7.50 state waterfowl stamp. These are existing requirements which this administrative regulation will not change.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are

associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky and Federal Waterfowl Survey in a postage paid envelope.

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$228 a season on food, lodging, transportation and equipment. This will add about \$20,520,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement 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: None

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(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 is intended to conserve populations of migratory birds, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of migratory birds.

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

(a) Necessity of proposed regulation if in conflict: 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: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 60, No. 140, Friday, July 21, 1995.

2. State compliance standards. State seasons and bag limits are within federal frameworks.



3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1995, and January 31, 1996, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession. Wood duck and teal - season frameworks allow 5 days in September. Bag limits may total 4 per day with not more than two of these being wood ducks. Possession limit is 8 of which not more than 4 can be wood ducks. Dove - season frameworks allow either 70 or 60 days between September 1, 1995, and January 15, 1996. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season. Common snipe - season frameworks allow a 107 day season between September 1, 1995 and February 28, 1996. Bag and possession limit is 8 and 16, respectively. Virginia and sora rails - the season may not exceed 70 days with a season framework between September 1, 1995 and January 20, 1996. Bag and possession limit of 25 per day, singly or in aggregate. Common moorhen and purple gallinule - the season may not exceed 70 days with a season framework between September 1, 1995 and January 20, 1996. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

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. Not applicable.

STATEMENT OF EMERGENCY  
301 KAR 5:001E

The Kentucky Department of Fish and Wildlife Resources is implementing an automated system for selling hunting and fishing licenses. This system is currently under development, and promulgation of this administrative regulation could not occur until the requirements of this new system were established in detail. An ordinary administrative regulation could not become effective before the scheduled implementation date of December 1, 1995. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor  
C. THOMAS BENNETT, Commissioner

TOURISM CABINET  
Department of Fish and Wildlife Resources

301 KAR 5:001E. Definitions for 301 KAR Chapter 5.

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY AND FUNCTION: To define the terms used in 301 KAR Chapter 5.

Section 1. Definitions. (1) "License agent" means a county clerk, government office or business authorized to sell licenses and conduct other transactions for the department.

(a) "Appointed agent" means a license agent appointed by the department and provided with a POS device.

(b) "Leasing agent" means a business that becomes a license agent by leasing the POS device from the department.

(c) "Governmental agent" means a license agent who is a county clerk or the representative of another federal, state, or local governmental entity.

(d) "Temporary agent" means a license agent substituting on a temporary basis for another agent whose agent status has been suspended.

(e) "Out-of-state agent" means a license agent who sells licenses

at a location outside the boundaries of Kentucky.

(2) "Agent cap" means the maximum number of appointed agents established for each county.

(3) "Agent in good standing" means a license agent whose status has not been suspended, revoked or terminated.

(4) "Agents of county clerks" means the business establishments included on the list submitted to the department by county clerks of their authorized license agents as of July 16, 1994.

(5) "Commission" is defined by KRS 150.010(4).

(6) "Commissioner" is defined by KRS 150.010(5).

(7) "Department" is defined by KRS 150.010(8).

(8) "POS licenses" means the licenses or permits authorized by KRS 150.175 and 301 KAR 3:022 which are available for sale through POS devices.

(9) "License stock" means the blank paper upon which licenses are printed by the POS device.

(10) "POS device" means a point-of-sale computer terminal, printer, and associated hardware, software, and connecting cables used to generate licenses and record license sale data.

(11) "Transaction" means the purchase or sale of a license, permit, or product, or the application for a hunt, using a POS device at a license agent location.

(12) "Upload" means the transfer, over telephone lines, of electronic data from the POS device to the department.

C. THOMAS BENNETT, Commissioner  
GREG GINTER, Secretary  
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: September 14, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Rebecca Games

(1) Type and number of entities affected: Approximately 1250 license agents across the state will be affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation 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 regulation supports automation of a previously manual hunting and fishing license system. Elimination of the manual system greatly reduces paperwork for both the license agent and the department. There should be no change in cost factors for the agents or the department.

2. Second and subsequent years: There should be no changes other than the ones identified in the first year.

(3) Effects on the promulgating administrative body: More efficient operations, increased availability of licenses, better control over license sales, uniform agent selection process.

(a) Direct and indirect costs or savings:

1. First year: Project was designed to equal costs under existing manual system.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None identified.

(b) Reporting and paperwork requirements: Reporting requirements will be automated under the new license system, greatly reducing paperwork.

(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: Department of Fish and Wildlife 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: some agents will have more types of licenses to sell, all agents will have increased availability to hunting and fishing licenses for their customers.

(b) Kentucky: Better service to hunters and anglers.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.195 changes the way licenses are distributed. As a result of this change, the department will deal directly with approximately 1250 agents rather than with only 120 county clerks. The alternative of remaining with a manual system is unacceptable because it would be ineffective, inefficient and labor-intensive.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(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 license agents were placed in several categories with differing requirements. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### STATEMENT OF EMERGENCY 301 KAR 5:010E

The Kentucky Department of Fish and Wildlife Resources is implementing an automated system for selling hunting and fishing licenses. This system is currently under development, and promulgation of this administrative regulation could not occur until the specifics of this new system were established in detail. An ordinary administrative regulation could not become effective before the scheduled implementation date of December 1, 1995. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor  
C. THOMAS BENNETT, Commissioner

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

##### 301 KAR 5:010E. License agent selection criteria.

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY AND FUNCTION: To establish the number of appointed agents per county, the criteria for selecting appointed agents, and application procedures for becoming a license agent.

Section 1. Agent Caps. (1) Except that a county shall not have fewer than two (2) appointed agent positions, the agent cap for each county shall be the lesser of:

(a) Equal to the number of licenses sold in that county during the 1993 license year divided by 850, which is the average number of licenses sold per agent in 1993, and rounded to the next largest whole number; or

(b) The number of agents of the county clerk in that county on July 16, 1994.

(2) Agent caps shall not include:

(a) Governmental agents or their branch offices; or

(b) Leasing agents.

Section 2. License Agent Applications and Agreements. (1) Before receiving authorization to serve as license agents, businesses or governmental agencies shall:

(a) Complete and submit a license agent application form;

(b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the appropriate agent agreement;

(c) Pay a security deposit as required in the agent agreement; and

(d) Sign an electronic fund transfer authorization form which authorizes the department to make electronic fund transfers from a bank account into which the agent shall deposit the proceeds from transactions.

1. Agents with multiple business locations wishing to consolidate payments shall make suitable arrangements with the department.

2. State agencies serving as license agents shall remit payment through the state accounting system.

(2) The following application and agent agreement forms are incorporated by reference. They may be inspected or copied at the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4224, between 8 a.m. and 4:30 p.m. (eastern time) on normal business days:

(a) License Agent Application Form, 1995.

(b) Electronic Fund Transfer Authorization Form, 1995.

(c) Appointed Agent Agreement, 1995.

(d) Leasing Agent Agreement, 1995.

(e) Governmental Agent Agreement, 1995.

(f) Out-of-state Agent Agreement, 1995.

(g) Temporary Agent Agreement, 1995.

(h) Inventory Agent Agreement, 1995.

(i) Inventory Agent Reporting Form, 1995.

(3) The department shall not appoint as agents:

(a) Individuals; or

(b) Businesses that do not have:

1. A valid federal identification number; and

2. Except for out-of-state agents, a Kentucky sales tax number.

Section 3. Appointed agents. (1) The department shall retain as appointed agents those agents of county clerks who before October 1, 1995:

(a) Complete and return the application as stipulated in Section 2 of this administrative regulation; and

(b) Complete and submit the agent agreement and electronic fund

transfer authorization forms as stipulated in Section 2 of this administrative regulation; and

(c) Pay the security deposit required by that agreement.

(2) The provisions of subsections (3) through (8) of this section shall apply to agents of county clerks who do not meet the deadlines stipulated in subsection (1) of this section.

(3) If the number of agents appointed under the provisions of subsection (1) of this section:

(a) Equals or exceeds the agent cap, the department shall not appoint additional agents in that county.

(b) Is less than the agent cap, the department may appoint additional agents up to the limit of the agent cap.

(4) If the number of appointed agents in a county falls below the agent cap, the department may appoint additional agents in that county up to the agent cap.

(5) Before it appoints additional agents in a county, the department shall:

(a) Give first right of refusal, based on seniority, to businesses that:

1. Are existing leasing agents; and
2. Are agents in good standing.

(b) If vacancies still exist, publish a paid announcement which conforms to the specifications of KRS 424.140 and 424.130 in the county or local newspaper as identified by KRS 424.120.

(6) Prospective agents shall apply on agent application forms.

(7) The department may inspect the facilities and records of applicants to verify the information on the application.

(8) If the department receives more applications than agent vacancies, the department shall:

- (a) Assign a numerical score, using the agent score sheet, to the applications; and
- (b) Appoint as agents those applicants receiving the highest scores.

(9) The agent score sheet is incorporated by reference. It may be inspected or copied at the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4224, between 8 a.m. and 4:30 p.m. (eastern time) on normal business days.

(10) If the department does not receive enough qualified applicants to fill existing vacancies in a county, it may extend the deadline date for application until the cap is reached.

**Section 4. Leasing Agents.** The department may lease POS devices to businesses in counties that are at or above the agent cap, providing that:

(1) The department has POS devices available for leasing purposes; and

(2) The business is not under suspension or revocation as a license agent.

**Section 5. Inventory Agents.** (1) County clerks who are license agents may become inventory agents by written request to the department.

(2) In exchange for an additional fifteen (15) cents for each license sold in the inventory agent's county, an inventory agent shall:

- (a) Maintain a supply of spare POS terminals, ribbons, paper stock, literature and other items as the department may direct;
- (b) Make these items available to license agents during the county clerk's normal business hours;
- (c) Keep accurate records, on forms provided by the department, of inventory items received and delivered; and
- (d) Collect and ship defective POS devices to a designated maintenance facility.

(3) The department shall not appoint an inventory agent for counties in which the county clerk has chosen not to be an inventory agent.

**Section 6. Temporary Agents.** (1) If an appointed agent is suspended, the department may appoint a temporary agent to serve during the term of the suspension.

(2) The department shall select temporary agents using the procedure detailed in Section 3(5) through (8) of this administrative regulation.

**Section 7. Out-of-state Agents.** The department may grant license agent status to business locations outside Kentucky if the out-of-state agent:

- (1) Was the agent of a county clerk; and
- (2) Posts a surety bond as stipulated in the out-of-state agent agreement.

C. THOMAS BENNETT, Commissioner

GREG GINTER, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: September 14, 1995 at 4 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Rebecca Games

(1) Type and number of entities affected: Approximately 1250 license agents across the state will be affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation 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 regulation supports automation of a previously manual hunting and fishing license system. Elimination of the manual system greatly reduces paperwork for both the license agent and the department. There should be no change in cost factors for the agents or the department.

2. Second and subsequent years: There should be no changes other than the ones identified in the first year.

(3) Effects on the promulgating administrative body: More efficient operations, increased availability of licenses, better control over license sales, uniform agent selection process.

(a) Direct and indirect costs or savings:

1. First year: Project was designed to equal costs under existing manual system.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None identified.

(b) Reporting and paperwork requirements: Reporting requirements will be automated under the new license system, greatly reducing paperwork.

(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: Dept. of Fish & Wildlife 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:

## ADMINISTRATIVE REGISTER - 700

(a) Geographical area in which administrative regulation will be implemented: some agents will have more types of licenses to sell, all agents will have increased availability to hunting and fishing licenses for their customers.

(b) Kentucky: Better service to hunters and anglers.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.195 changes the way licenses are distributed. As a result of this change, the department will deal directly with approximately 1250 agents rather than with only 120 county clerks. The alternative of remaining with a manual system is unacceptable because it would be ineffective, inefficient and labor-intensive.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(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 license agents were placed in several categories with differing requirements. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### STATEMENT OF EMERGENCY 415 KAR 1:114E

415 KAR 1:114 contains the standards for the certification of contractors eligible to perform corrective action reimbursable from the Petroleum Storage Tank Environmental Assurance Fund Commission. In its current form, the administrative regulation requires the certified contractor to be physically on site during all times that reimbursable corrective action is being performed and contains no guidance on the procedures to revoke or suspend a certification. Whereas, the current administrative regulation has slowed the pace and raised the cost of corrective action by requiring the certified individual's presence, left the public unprotected by not requiring that all cost be necessary and reasonable, and not provided adequate procedures to remove or suspend a certification. Whereas, the amendments contained in this emergency administrative regulation are necessary to protect human health and the environment by providing for quicker, less expensive corrective actions and allowing individuals who are not qualified to have their certifications suspended or revoked. Delaying these amendments until an ordinary administrative regulation could be promulgated would allow continued expense and unqualified individuals to continue unabated. This emergency administrative regulation will be followed by an ordinary administrative regulation to be filed with the Legislative Research Commission.

BRERETON C. JONES, Governor  
LAURENCE W. McCABE, Executive Director

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

#### 415 KAR 1:114E. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130

STATUTORY AUTHORITY: KRS 224.60-130

EFFECTIVE: August 16, 1995

NECESSITY AND FUNCTION: KRS 224.60-130 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation sets forth the criteria for obtaining certification from the commission to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank, and to be eligible to receive reimbursement or payment from the fund. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action and general knowledge of cleanup standards required to obtain closure from the Underground Storage Tank Branch, health and safety standards, and Petroleum Storage Tank Environmental Assurance Fund administrative regulations.

Section 1. Definitions. Except as defined in this section, the terms in this administrative regulation shall have the same definition as in KRS 224.60-115 or 415 KAR 1:050.

(1) "Certified contractor" means an individual certified by the commission as qualified to engage in the performance or supervision of corrective action at a facility in the event of a release from a petroleum storage tank system.

(2) "Company" means a person, other than an individual, engaged in the business of performing corrective action for a release from a petroleum storage tank system and who employs one (1) or more certified contractors.

(3) "Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 8 of this administrative regulation.

(4) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plans, and implementation of corrective action plans approved by the cabinet.

(5) "Supervise" means ~~being physically on site and~~ having the authority and responsibility for the performance of corrective action at a facility in the event of a release from petroleum storage tank system, and having the ability to exercise independent judgement and direct the activities of employees or ~~and~~ subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

(6) "Cabinet" as used in this administrative regulation means the Cabinet for Natural Resources and Environmental Protection unless specified otherwise.

Section 2. Applicability. (1) Beginning March 1, 1995, costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if ~~the corrective action is~~:

(a) They are performed or supervised by an individual who is certified by the commission; ~~and~~

(b) They are performed in compliance with 401 KAR Chapter 42; and

(c) The costs are necessary and reasonable, and performed in compliance with 415 KAR Chapter 1;

(d) ~~(e)~~ This requirement shall apply only to applications for assistance agreements made after March 1, 1995.

(2) Certified contractors shall perform or supervise corrective action, such as, site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

(3) To be eligible for reimbursement from the fund, the person who contracts to perform corrective action shall designate the certified contractor responsible for supervision of the corrective action prior to incurring costs by giving written notice to the owner or operator of the facility and the commission. If the certified contractor changes, a new notice shall be given.

(4) A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 3. Application Requirements. (1) An applicant for certified contractor shall:

(a) Submit an application to the commission on the Certified Contractor Application form; and

(b) Submit verification of experience by participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system; and

(c) Complete the examination requirements of this administrative regulation.

(2) An application to take the certified contractor examination shall be denied by the commission if the applicant:

(a) Fails to provide the information required by the application form; or

(b) Fails to comply with the experience requirements of this administrative regulation; or

(c) Makes a misrepresentation or submits false information in the application.

(3) An applicant, that has been assigned a testing date and time, shall request a change in their testing schedule in writing to the commission. If the request for a rescheduled testing date falls into another testing quarter, the applicant must reapply to the commission.

(4) An applicant requesting to resit the certified contractor examination shall reapply to the commission.

Section 4. Experience Requirements. (1) An applicant shall demonstrate participation in, as defined in Section 1(4) of this administrative regulation, the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the commission ~~may~~ shall reduce the experience requirement of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) A professional engineer registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) A certified professional geologist registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 5. Examination Requirements. An applicant for certified contractor shall take and pass a written examination administered by the commission in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of:

(a) Corrective action for a release from a petroleum storage tank system - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system; and

(b) Applicable occupational health and safety and public health and safety requirements - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology,

and industry recommended practices with respect to applicable occupational health and safety and public health and safety requirements; and

(c) Knowledge of the reporting requirements, documentation requirements and procedures of the regulatory agency (Underground Storage Tank Branch) and the Petroleum Storage Tank Environmental Assurance Fund Commission - the examination shall test the applicant's knowledge of codes, laws and regulations with respect to these two (2) governmental agencies.

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) Examinations shall be given, at a minimum, quarterly through December 31, 1997, and semiannually thereafter.

(4) An application to take the examination shall be filed with the commission at least ten (10) working days in advance of the testing date to take the examination.

(5) All examinations shall be graded and the applicants shall be notified within fifteen (15) working days. Examination papers shall not be returned to or reviewed by the applicant, however, the applicant may review their test response sheet by appointment.

(6) The commission shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 6. Certification and Renewal Procedures. (1) The commission shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed annually.

(2) An application for renewal shall be submitted to the commission on the Certified Contractor Application for Renewal form.

(3) The renewal of a certificate shall be denied by the commission if an applicant:

(a) Fails to provide the information required by the Certified Contractor Application for Renewal form; or

(b) Makes a misrepresentation or submits false information in the application for renewal; or

(c) Failed to supervise a corrective action during the year prior to renewal; or

(d) Fails to maintain a professional registration.

(4) An applicant denied the opportunity to take the certification test or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

(5) The commission may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action and/or procedures, reporting requirements and document requirements to be submitted to the Underground Storage Tank Branch or the Petroleum Storage Tank Environmental Assurance Fund Commission since the date of original certification.

(a) The commission may waive this requirement for professional engineers and certified professional geologists registered in Kentucky if the applicant has submitted proof of successful completion of pertinent training.

(b) The determination to waive this requirement rests solely in the commission.

Section 7. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the commission if the certified contractor:

(1) Negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required federal, state or local regulation, code or standard relating to corrective action; or

(2) Recklessly or intentionally caused or permitted a person under

## ADMINISTRATIVE REGISTER - 702

the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet; or

(3) Obtained the certification through fraud or misrepresentation; or

(4) Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.

(5) The commission shall, upon staff recommendation, address the above charges against a certified contractor. The commission vote on issues of suspension or revocation shall be in open session and require a simple majority of those commission members voting to suspend or revoke a certification. The commission shall then cause a letter to be issued notifying the certified individual of the commission's action.

(6) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

Section 8. Interim Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the commission in writing of the extended absence of a certified contractor due to an emergency or unanticipated circumstances. The notice shall provide the commission with the following information:

(a) Name and qualifications of the individual replacing the certified contractor; and

(b) The length of time for which the company seeks to have the interim contractor fulfill the obligations of the certified contractor.

(2) The commission shall evaluate the qualifications of the designated interim contractor and shall notify the company of the commission's determination in writing within fifteen (15) days of receipt of the company's notice. The determination shall:

(a) Approve or deny the company's request for designation of the interim contractor;

(b) Specify conditions as appropriate to the facility and the interim contractor's qualifications.

Section 9. (1) The following forms are incorporated by reference:

(a) "Certified Contractor Application Form (March, 1994)"; and

(b) "Certified Contractor Application for Renewal Form (March, 1994)".

(2) These forms may be obtained, inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

Section 10. Applicants certified under the provisions of 415 KAR 1:115, effective March 1, 1994, shall not be deprived of their certification granted pursuant to the test results from the February 16-17, 1994 certification examinations if the recipient of the certification attends the seminars conducted by the Underground Storage Tank Branch addressing the changes in cleanup standards and closure procedures. The holder of the certification shall submit written proof of seminar attendance, verified by the Underground Storage Tank Branch, to the commission.

Section 11. The provisions of this administrative regulation shall be enforced beginning March 1, 1995.

LAURENCE W. McCABE III, Executive Director

APPROVED: August 15, 1995

FILED WITH LRC: August 16, 1995 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: David Wicker

(1) Type and number of entities affected: The proposed amended

regulation will affect approximately 400 contractors in the Commonwealth of Kentucky who perform corrective action due to releases from petroleum storage tanks.

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

1. Effect on cost of living and employment: None

2. Effect on cost of doing business: There will be an indirect cost to the contractor due to the need to have persons certified by the commission to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification. The amendments will lower the cost to the petroleum storage tank owner or operator by not requiring the certified individual to be present for all aspects of corrective action.

3. First year: There will be an indirect cost due to the need to have persons certified by the commission to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification. The amendments will lower the cost to the petroleum storage tank owner or operator by not requiring the certified individual to be present for all aspects of corrective action.

4. Continuing costs or savings: There will be a continuing cost due to the need to apply annually for renewal of the certification. The amendments will lower the cost to the petroleum storage tank owner or operator by not requiring the certified individual to be present for all aspects of corrective action.

5. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Individuals will be required to complete and file the application for certification and the application for renewal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The commission will experience direct costs due to the need to prepare and administer the test for certification of contractors; receive, review and maintain applications for certification; and to identify the proper materials for the certification process. The amendments will not increase the commission's cost.

2. Continuing costs or savings: The commission anticipates continuing costs due to the need to upgrade the test on a periodic basis, to identify new materials concerning performance of corrective action, and to process applications for renewal. The amendments will not increase the commission's cost.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The commission believes that it has adequate staff at this time to implement and administer this program. The amendments will not increase the commission's cost.

(b) Reporting and paperwork requirements: The commission will be required to collect, review, maintain, and process applications for certification and applications for renewal. The commission will provide applicants with information with which they must be familiar to obtain certification.

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

(4) Source of revenue: The funds expended by the commission will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(5) Assessment of alternative methods: reasons why alternatives were rejected:

(a) The commission is granted the statutory authority to establish requirements that must be met by contractors to receive reimbursement from the fund. Based upon its experience in administration of the program since 1990, the commission believes that a certain minimum level of technical proficiency and competence must be established by persons responsible for the performance of corrective action. This proficiency and competency should ultimately result in a lowered cost of corrective action.

## ADMINISTRATIVE REGISTER - 703

ALTERNATIVE: 1. Less stringent: The less stringent provision would be to not require a certification program. This has been rejected on the basis that experience has indicated that a certain minimum level of technical proficiency and competency is required.

2. More stringent: A more stringent alternative is contained in the regulation prior to this amendment. It required the certified contractor to be physically on-site during all phases of work.

3. Present proposal: The proposed regulation establishes minimum requirements for technical proficiency and competency. This amended regulation will relax the current standard by requiring that the certified individual be in a supervisory role during the time corrective action is on-going, rather than being physically present for all work. It will also require that cost meet the statutory standard of being necessary and reasonable and provide the appropriate procedural mechanism for removing a certification.

(6) Economic impact: None

(7) Benefits of the administrative regulation: The regulation in its amended form saves both the petroleum storage tank owner and the commission the expense of paying for a certified contractor to be on site at all times, when that sort of supervision is not always needed. The amended regulation specifically states that all cost must be necessary and reasonable. In addition, the amended regulation provides a procedure to remove or suspend a certification under certain circumstances, thus assuring the public that only qualified individuals can retain certification.

(8) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: This regulation overlaps and supplements 815 KAR 30:060, Underground Petroleum Storage Tank Installer/Remover Certification Regulation of the State Fire Marshall. This amendment will not effect the Fire Marshall's regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict. 815 AR 30:060 applies only to the installation and removal of underground storage tanks. This regulation will not duplicate or conflict with those requirements. This regulation is more comprehensive in that it requires a knowledge of all actions necessary to properly perform corrective action due to a release from a petroleum storage tank.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(9) Any additional information or comments: There is no additional information.

(11) Tiering Statement: Was tiering applied? No. This regulation applies to all individuals and companies contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

### 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. 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 whether this administrative regulation will affect the local government or only a part or division of the local government. This

regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

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? This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

### STATEMENT OF EMERGENCY

502 KAR 45:005E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:005E. Definitions.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the definitions to be used in the administrative regulations concerning the selection process.

Section 1. Definitions. (1) "Cadet trooper" means an applicant for employment as an officer who is selected by the commissioner to attend the Kentucky State Police Academy and conditionally employed as a trainee.

(2) "Register" means the list of persons eligible for selection as a cadet trooper.

(3) "Appointment" means selection by the commissioner of a cadet trooper for employment as an officer, upon successful completion of basic training at the Kentucky State Police Academy.

(4) "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name has been placed on the register.

(5) "Applicant" means a person who submits an employment application for the position of cadet trooper and who participates in the selection process.

(6) "Content Based Task Test (CBTT)" means the physical fitness test consisting of simulated essential job tasks, used to determine if applicants can perform the essential job tasks required during basic training at the Kentucky State Police Academy.

PAUL F. ISAACS, Commissioner



## ADMINISTRATIVE REGISTER - 704

APPROVED BY AGENCY: August 27, 1995  
FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This administrative regulation applies only to applicants for the position of cadet trooper.

STATEMENT OF EMERGENCY  
502 KAR 45:015E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor  
PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:015E. Qualifications.

RELATES TO: KRS 16.040, 16.050 [1994 Ky. Acts ch. 16]

STATUTORY AUTHORITY: KRS 16.040, 16.080

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.040 sets forth the basic qualifications for appointment as an officer. KRS 16.080 vests in the commissioner the authority to adopt administrative regulations for enlistment. This administrative regulation establishes the procedure to be used to determine whether applicants possess the basic qualifications.

Section 1. Applicants shall submit a birth certificate to establish that they meet the age qualification of KRS 16.040(2)(a).

Section 2. Applicants shall submit a college transcript verifying sixty (60) semester hours of credit from an accredited college or university or a high school diploma or GED with a copy of their DD-214 reflecting two (2) years of active duty military service or a notarized letter from the law enforcement employer certifying two (2) years of full-time law enforcement employment as a sworn officer to establish the educational or experience qualification of KRS 16.040(2)(d). ~~[to a background investigation which may include a polygraph examination to establish the good moral character qualification of KRS 16.040(2)(b).]~~

Section 3. Applicants who are citizens of another country at the time of application shall submit naturalization certificates prior to employment to establish the citizenship qualification of KRS 16.040(2)(c). ~~[offered conditional employment as cadet troopers shall submit to a medical examination to establish the good health qualification of KRS 16.040(2)(b).]~~

Section 4. Applicants who are citizens of another state at the time of application shall submit Kentucky motor vehicle operator's licenses prior to appointment to establish the residency qualification of KRS 16.040(2)(c). ~~[country at the time of application shall submit naturalization certificates prior to employment to establish the citizenship qualification of KRS 16.040(2)(c).]~~

Section 5. Applicants shall submit to a written examination designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department. Following the written examination the commissioner shall determine the number of applicants advancing to the next component of the selection process based upon the vacant funded positions and the projected attrition rates as candidates advance through the selection process. ~~[Applicants who are citizens of another state at the time of application shall submit Kentucky motor vehicle operator's licenses prior to employ-~~



## ADMINISTRATIVE REGISTER - 705

~~ment to establish the residency qualification of KRS 16.040(2)(c).]~~

Section 6. Following the written examination an appropriate number of applicants shall advance to the Content Based Task Test (CBTT) to determine whether the applicant is physically able to safely perform essential job tasks. The inability to safely perform essential job tasks, with or without reasonable accommodations, shall be grounds for deferral or disqualification. [Applicants shall submit a college transcript verifying college credits and degrees or a high school diploma with a copy of their DD 214 or notarized letter from law enforcement employer certifying sworn officer employment to establish the education qualification of KRS 16.040(2)(d).]

Section 7. Following completion of the Content Based Task Test (CBTT) an appropriate number of applicants shall advance to the oral interview component of the selection process. [All persons appointed as officers shall be physically able to safely perform essential job tasks, either with or without reasonable accommodation, including but not limited to reading, writing, operating a police pursuit vehicle at high speed under all weather and lighting conditions, running, climbing stairs and fences and hillsides, overcoming violent physical resistance from persons arrested or detained, handcuffing persons arrested or detained, lifting and carrying or dragging incapacitated persons, firing a handgun with either hand and reloading, and firing and reloading a shotgun. To determine these physical qualifications, a medical examination shall be conducted of applicants who are offered employment as cadet troopers. The medical examination may include physical tests to determine ability to perform the essential job tasks. Applicants hired as cadet troopers shall be required to perform simulated essential job tasks during basic training at the Kentucky State Police Academy. Inability to safely perform essential job tasks, either with or without reasonable accommodation, shall be grounds for disqualification or dismissal.]

Section 8. Following completion of the oral interview component of the selection process an appropriate number of applicants shall advance to the background investigation which may include a polygraph examination to establish the good moral character qualification of KRS 16.040(2)(b).

Section 9. Following completion of the background investigation component of the selection process an appropriate number of applicants shall be given a conditional offer of employment and required to submit to a medical examination and psychological examination to determine fitness to safely perform essential job tasks with or without reasonable accommodations.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor  
2. Second and subsequent years: Minor  
(3) Effects on the promulgating administrative body:  
(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor  
2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY

502 KAR 45:025E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

502 KAR 45:025E. Disqualification.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

## ADMINISTRATIVE REGISTER - 706

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the grounds for disqualification from competition in the process.

Section 1. Applicants shall be disqualified from further participation in the selection process or removed from the register if it is determined that:

- (1) An applicant does not meet any one (1) of the qualifications for appointment as an officer;
- (2) An applicant has made a false statement of material fact on the application, or in response to any questions or requests for information during the selection process;
- (3) An applicant has used or attempted to use political influence, coercion or bribery to secure an advantage in any phase of the selection process;
- (4) An applicant has cheated during the course of any examination required during the selection process, or has attempted to gain an advantage over other applicants by any dishonest or intentionally misleading act or omission;
- (5) An applicant has failed to comply with any instructions from the department relating to the selection process;
- (6) An applicant has been dismissed for cause from any public agency, or has resigned while charges of misconduct were pending;
- (7) An applicant has been convicted of a felony or any crime of moral turpitude;
- (8) An applicant is a current user of a controlled substance, unless prescribed by a physician;
- (9) An applicant is addicted to any controlled substance or intoxicant;
- (10) An applicant has more than six (6) [five-(5)] driver demerit points against his operator's license;
- (11) An applicant tests positive for an unlawful controlled substance as determined by a blood or urine analysis;
- (12) An applicant has used a controlled substance which would constitute a felony offense;
- (13) An applicant has used marijuana beyond experimental use.

Section 2. If [probable] cause exists to believe that an applicant has committed an act or omission which if true would result in disqualification, the department may defer any further processing of the application, or may condition further processing upon successful completion of a polygraph examination conducted by a licensed examiner employed by the department.

Section 3. An applicant who is disqualified or upon whose application further processing is deferred shall be informed within ten (10) working days of the reason for the disqualification or deferral, and of the right to appeal to the State Police Personnel Board.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the

position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY 502 KAR 45:035E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by

## ADMINISTRATIVE REGISTER - 707

an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor  
PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:035E. Application.

RELATES TO: KRS 16.040, 16.050 [~~4894 Ky. Acts ch. 16~~]

STATUTORY AUTHORITY: KRS 16.050, 16.080

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such administrative regulations as necessary to assure appointment of qualified officers to the department. This administrative regulation requires applicants to complete a written application form.

Section 1. Applications shall be made on forms prescribed by the commissioner and provided by the department. The application for employment form was adopted May 1, 1994, and is hereby incorporated by reference. Application forms may be inspected and copied by contacting the Kentucky State Police Personnel Section, 919 Versailles Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. Failure to submit the application by the specified due date or to comply with all instructions for completion and submission shall disqualify the applicant from further consideration in the current selection process.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY

502 KAR 45:045E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:045E. Written examination.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes a written examination.

Section 1. The written examination shall be practical in nature and shall be designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department.

Section 2. Examinations shall be administered at such times and places as designated by the commissioner. The commissioner may direct that examinations be conducted regionally if he finds regional examinations to be convenient and practicable.

## ADMINISTRATIVE REGISTER - 708

Section 3. An applicant may take the examination only one (1) time in any twelve (12) month period.

Section 4. Applicants must have submitted a completed application prior to taking the written examination. ~~[who submit an incomplete or inaccurate application shall not be allowed to take the examination.]~~

Section 5. Applicants who will not ~~[have failed to]~~ meet the age, ~~[or]~~ educational or experience requirements shall not be permitted to take the written examination.

Section 6. Examinations shall be rated impartially, and each applicant shall be advised of their ~~[his]~~ score.

Section 7. The written examination shall constitute thirty (30) percent of the total score.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY

502 KAR 45:055E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:055E. Oral interview.

RELATES TO: KRS 16.050 ~~[1994 Ky. Acts ch. 16]~~

STATUTORY AUTHORITY: KRS 16.050

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes the oral interview component of the examination.

Section 1. (1) An appropriate number of applicants who have completed the CBTT ~~[written examination]~~ shall be eligible to participate in the oral interview component of the selection process. Oral interviews shall be conducted by oral interview panels appointed by the commissioner, who shall determine the number of applicants to be interviewed. The commissioner shall determine the number of applicants to be interviewed based upon the number of available vacant funded positions and the projected attrition rates as candidates advance through the selection process ~~[projections based upon past selection processes of the number of applicants necessary to process in order to fill the available positions]~~. Applicants shall be selected for interviews in rank order as determined by their combined scores on the written examination and the CBTT. The commissioner may deviate from the rank order of score only when necessary to correct a manifest imbalance in the representation of minorities or women in the pool of qualified applicants, and there exists a manifest imbalance of minorities or women in the department.

(2) Each oral interview panel shall consist of three (3) members, at least one (1) of whom shall be a female or a member of a minority group, and at least one (1) of which shall be a sworn officer. To ensure fairness and consistency, panel members shall receive training related to interview methodology and equal employment opportunity law.

## ADMINISTRATIVE REGISTER - 709

(3) Members of the oral interview panels shall disclose each instance in which they are personally acquainted with an applicant to be interviewed or with any member of the applicant's immediate family, and that applicant shall be interviewed by another panel.

Section 2. (1) Each interview shall be structured so that all applicants are asked the same initial questions and rated in the same manner, although panel members may ask supplementary questions if they deem it necessary.

(2) Each applicant interviewed shall be scored in each of five (5) categories by each panel member. The categories shall be:

- (a) Maturity, emotional stability and ego strength;
- (b) Conscientiousness and persistence;
- (c) Social boldness and venturesomeness;
- (d) Self-assuredness; and
- (e) Self-discipline.

For each category, the applicant shall be scored on a range from zero to six (6), with six (6) being the highest score and zero being the lowest score.

(3) The oral interview score shall constitute sixty (60) percent of the overall score. As soon as practicable after the oral interview, each applicant shall be advised of their [his] score and ranking, and may [shall] be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process by consenting to a background investigation.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY

502 KAR 45:065E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:065E. Background investigation.

RELATES TO: KRS 16.050 ~~[1994 Ky. Acts ch. 16]~~

STATUTORY AUTHORITY: KRS 16.050, 16.080

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.040 and 16.050 direct the Commissioner of the Department of State Police and the State Police Personnel Board to assure the fitness of candidates for employment. This administrative regulation establishes a background investigation as a component of the selection process.

Section 1. An appropriate number of applicants who have completed the written examination and the CBTT, and the oral interview and who have requested to remain in the selection process shall be required to submit to a background investigation which may include a polygraph examination.

Section 2. Background investigations shall be conducted by individuals selected by the commissioner. Applicants who have lived in another state shall be investigated by an appropriate law enforcement agency in that state, at the request of the commissioner. Applicants shall not be considered for employment until the background investigation is completed. Reports of all background investigations shall remain confidential and shall be filed in headquarters.

## ADMINISTRATIVE REGISTER - 710

Section 3. Background investigators may discontinue an investigation and recommend disqualification or deferral when the investigation reveals facts or circumstances which constitute grounds for disqualification or deferral.

Section 4. Background investigators may express opinions about the suitability of applicants for employment, but their opinions shall be expressed in writing and supported by specific factual reasons. The commissioner may give such weight to an opinion by an investigator as he deems appropriate.

Section 5. All reports of background investigations shall be confidential. Information obtained as a result of a background investigation shall not be disseminated. Reports of background investigations shall be filed at Kentucky State Police Headquarters in a secure file to which only the commissioner or persons specifically designated by the commissioner shall have access.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995  
FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY 502 KAR 45:075E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor  
PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:075E. Register.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to promulgate administrative regulations which include provisions for the establishment of eligibility lists as a result of competitive examinations, from which lists vacancies shall be filled. This administrative regulation establishes a register for the employment of cadet troopers.

Section 1. The commissioner shall establish and maintain a register of the names of applicants eligible for selection to the position of cadet trooper. The commissioner shall determine, based upon the needs of the department, projected attrition, authorized strength levels and number of applicants, the date of establishment of the register and the number of eligible applicants to be placed on the register.

Section 2. Applicants who have completed the written examination, the CBTT, the oral interview, the background investigation, and who have not been disqualified shall be placed on the register in rank order, as determined by the combined score of the written examination, the CBTT, and the oral interview. The written examination score shall be combined with the CBTT, and the oral interview score to determine placement on the register, with the written examination score constituting thirty (30) [forty (40)] percent of the final score, the CBTT constituting thirty (30) percent of the final score, and the oral interview score constituting forty (40) [sixty (60)] percent. Applicants who receive the same score shall be ranked by random draw, with veterans receiving preference in accordance with the provisions of KRS 16.040(3).

## ADMINISTRATIVE REGISTER - 711

Section 3. The commissioner shall select candidates for employment as cadet troopers in the order of placement on the register, but may deviate from that order when necessary to correct a manifest imbalance of minorities or women in the department ~~(any cadet class)~~, or when the background investigation reveals that a candidate is less suitable for employment than the candidate who occupies the next position on the register.

Section 4. The register shall be continuous, and when an applicant's name is placed on the register as a candidate for selection the applicant may not again participate in the selection process for a period of twelve (12) months. Any candidate who is not selected for employment within a period of twenty-four (24) months from the date of placement on the register shall have their ~~his~~ name removed from the register.

Section 5. The commissioner may remove a candidate from the register for the following reasons:

(1) Upon receipt of reliable information indicating grounds for disqualification or deferral;

(2) When the candidate cannot be located by postal authorities;

(3) When the candidate declines an offer of employment, fails to respond to an offer of employment, or indicates that they ~~he~~ no longer wishes to be considered for employment;

(4) Upon the expiration of a period of twenty-four (24) months from the date of placement on the register.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact

anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY 502 KAR 45:085E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This amendment provides for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. Other necessary clarifying changes to this administrative regulation are also included. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor  
PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:085E. Medical examination.

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040, 16.080

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.040 provides that officers must be in good health and directs the commissioner to prescribe minimum physical requirements for appointment and to conduct tests and require physical examinations to determine the fitness of each applicant. This administrative regulation establishes the tests and examinations which are to be conducted.

Section 1. Applicants selected to be cadet troopers and offered probationary employment as trainees shall be required to submit to medical examinations to determine fitness to safely perform essential job tasks with or without reasonable accommodation. The medical examination shall be conducted after an offer of employment is made but before applicants report for training. The offer of employment shall be conditioned upon successful completion of the medical examination.

Section 2. Medical examinations shall be conducted by physicians selected by the department. The examinations shall include hearing, and visual examinations, and a determination that the applicant is not



## ADMINISTRATIVE REGISTER - 712

color blind. The physicians shall render opinions to the department as to whether applicants who have been offered employment are physically fit to safely perform essential job tasks, with or without reasonable accommodation, and as to whether applicants have any medical condition which, during the performance of duty as a state trooper, and with or without reasonable accommodation, would endanger the applicant or others.

Section 3. As part of the medical examination, applicants shall be required to provide complete medical history information and to answer questions related to the examination. Information and records related to the medical examinations shall be confidential and retained in a file separate from the applicants personnel file.

Section 4. The medical examination may include tests conducted by an occupational therapist under the direction of the examining physician, if necessary to determine an applicant's ability to safely perform essential job tasks with or without reasonable accommodation.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY

502 KAR 45:150E

No current provisions provide for a content based task test to be used in the selection process of Kentucky State Police cadet troopers. This administrative regulation will provide for this test and an emergency exists as the selection process will begin August 28, 1995 and authorization for the test must be in place prior to offers of employment thereafter. This administrative regulation will be replaced by an ordinary administrative regulation to be filed in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

PAUL F. ISAACS, Commissioner

### DEPARTMENT OF STATE POLICE

#### 502 KAR 45:150E. Content Based Task Test (CBTT).

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040

EFFECTIVE: August 30, 1995

NECESSITY AND FUNCTION: KRS 16.040 requires that persons appointed as officers be physically able to safely perform essential job tasks. This administrative regulation establishes the procedure to determine if the applicants are capable of performing the essential job tasks of an officer during basic cadet training.

Section 1. An appropriate number of applicants who have completed the written examination shall be eligible to participate in the Content Based Task Test (CBTT).

Section 2. The CBTT shall consist of tasks simulating the essential job tasks cadet troopers will be required to perform during basic training either with or without reasonable accommodation, including but not limited to running, climbing stairs, fences and hillsides, overcoming violent physical resistance from persons arrested or detained, handcuffing persons arrested or detained, lifting and carrying or dragging incapacitated persons, firing and reloading a handgun with either hand and firing and reloading a shotgun. Identifying and describing the physical characteristics of suspects of crimes. Identifying and describing the physical characteristics of stolen vehicles or vehicles used in crimes. Identifying and describing hazardous materials identifiers or placards affixed to vehicles hauling hazardous materials.

Section 3. The CBTT shall be structured so that all applicants are required to perform the same tasks and be rated in the same manner.



## ADMINISTRATIVE REGISTER - 713

Section 4. The CBTT score shall constitute thirty (30) percent of the score. As soon as practical after the CBTT, each applicant shall be advised of their score and ranking, and may be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process and be scheduled for the oral interview.

PAUL F. ISAACS, Commissioner

APPROVED BY AGENCY: August 29, 1995

FILED WITH LRC: August 30, 1995 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All applicants for the position of cadet trooper with the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant costs, program is completed. Savings anticipated in processing of applicants.

1. First year: Minor

2. Continuing costs or savings: All procedures in place at this time. Savings in processing will offset any costs.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to ensure that the selection process is specific as to job

requirements and business necessity.

(11) Tiering: Is tiering applied? No. This regulation applies only to applicants for the position of cadet trooper.

### STATEMENT OF EMERGENCY

903 KAR 5:001E

Executive Order 95-289 transferred the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development effective July 1, 1995. This emergency regulation repeals all administrative regulations containing subject matter included in 903 KAR Chapters 1, 5, and 6 over which the Cabinet for Human Resources had supervisory and administrative authority which was transferred to the Cabinet for Workforce Development effective July 1, 1995. This repealer administrative regulation is in accordance with Executive Order 95-289, KRS 195.020(1)(b), (2), and KRS Chapter 340. In order to finalize the transfer of regulatory authority to the Cabinet for Workforce Development, 903 KAR 1:010 through 903 KAR 6:010 and 903 KAR 6:040 through 903 KAR 6:070 are repealed in their entirety. The repeal is necessary to transfer all former statutory authority designated to the Department for Employment Services to the Cabinet for Workforce Development. This emergency administrative regulation will not be replaced by an ordinary administrative regulation pursuant to KRS Chapter 13A.

BRERETON C. JONES, Governor

MASTEN CHILDERS II, Secretary

### CABINET FOR HUMAN RESOURCES

Office of Personnel and Budget

**903 KAR 5:001E. Repeal of 903 KAR 1:010 through 903 KAR 6:010 and 903 KAR 6:040 through 903 KAR 6:070 in their entirety.**

RELATES TO: KRS 195.020(1)(b),(2), Chapter 340, 341.115

STATUTORY AUTHORITY: KRS 12.028, 194.050(1), 341.115

NECESSITY AND FUNCTION: This emergency administrative regulation repeals all regulations contained in 903 KAR 1:010 through 903 KAR 6:010 and 903 KAR 6:040 through 903 KAR 6:070, in their entirety. This repeal is necessary to transfer all former statutory authority designated to the Department for Employment Services to the Cabinet for Workforce Development pursuant to Executive Orders 95-289 and 94-577.

Section 1. The following administrative regulations are hereby repealed: Cabinet for Human Resources, Department for Employment Services.

903 KAR Chapter 1, Employment Agencies

903 KAR 1:010, Private employment agencies.

903 KAR Chapter 5, Unemployment Insurance

903 KAR 5:010, Application for employer account; reports.

903 KAR 5:020, Change of status; discontinuance of business.

903 KAR 5:030, Employer contributions.

903 KAR 5:050, Posting notice to employees.

903 KAR 5:060, Social Security number required of employees.

903 KAR 5:070, Separation for cause; reports.

903 KAR 5:080, Reasonable time for protesting claim.

903 KAR 5:090, Labor dispute or strike; notification.

903 KAR 5:100, Claimant's reporting requirements.

903 KAR 5:110, Week of unemployment defined.

903 KAR 5:130, Appeals.

903 KAR 5:140, Fees for representing claimant.

903 KAR 5:150, Determination defined.

903 KAR 5:160, Unemployment insurance fund payments.

903 KAR 5:170, Interstate claimants.

903 KAR 5:180, Time extension for reports and notices.

## ADMINISTRATIVE REGISTER - 714

903 KAR 5:220, Cash value of board and lodging.  
903 KAR 5:230, Employer's records.  
903 KAR 5:250, Recoupment and recovery.  
903 KAR 5:270, Maximum weekly benefit rates.  
903 KAR 5:290, Employer contribution rates.  
903 KAR 5:300, Required reports and due dates.  
903 KAR 5:310, Due dates.  
903 KAR 5:320, Fraud disqualifications.  
903 KAR 5:330, Release of Notice of Levy.  
903 KAR 5:340, Voluntary election of coverage.  
903 KAR 5:350, Covered employment.  
903 KAR 5:360, Limitation on pension deductions.  
903 KAR 5:370, Contract construction rates.  
903 KAR 5:380, Successorship.  
903 KAR 5:392, Claimant profiling.  
903 KAR Chapter 6 Employment Services  
903 KAR 6:010, Work Incentive Program.  
903 KAR 6:040, Job Training Partnership Act.  
903 KAR 6:050, Veterans' benefits.  
903 KAR 6:060, Confidentiality of records of the Department for Employment Services.  
903 KAR 6:070, Classifying a person as unemployed; appeals.

D. T. MAYNARD, Executive Director  
MASTEN CHILDERS II, Secretary  
APPROVED BY AGENCY: July 31, 1995  
FILED WITH LRC: August 28, 1995 at noon

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle

- (1) Type and number of entities affected: None
- (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:
  - (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: 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not used since this is a repealer regulation.

### 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.

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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

**COMPILER'S NOTE:** The following administrative regulations were amended by the promulgating agencies and the Administrative Regulation Review Subcommittee on September 11 and 12, 1995, unless otherwise noted.

**FINANCE AND ADMINISTRATION CABINET**  
**Office of Financial Management and Economic Analysis**  
**(As Amended)**

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

RELATES TO: KRS Chapter 103

STATUTORY AUTHORITY: KRS 103.286, 26 USC Sec. 146

NECESSITY AND FUNCTION: Pursuant to KRS 103.286, the Kentucky Private Activity Bond Allocation Committee shall attempt to allocate the state ceiling for the issuance of private activity bonds of Kentucky in order to foster economic development within the Commonwealth and promote the general welfare of its citizens and the public purposes of the Commonwealth. KRS 103.286 provides that the Secretary of the Finance and Administration Cabinet (as Chairman of the Kentucky Private Activity Bond Allocation Committee) shall promulgate administrative regulations in accordance with KRS Chapter 13A to provide for the allocation of the state ceiling for the issuance of private activity bonds among all issuers of such bonds within the Commonwealth of Kentucky. This administrative regulation establishes the formula by which state ceiling for the issuance of private activity bonds will be allocated.

Section 1. Definitions. For the purposes of this administrative regulation:

(1) "Affected bonds" means "private activity bonds" as defined in the Internal Revenue Code of 1986, as amended by 26 USC sec. 146, et seq. (the "Code"), excluding any such obligations not subject to the state ceiling under the Code;

(2) "Bonds" means bonds, notes and other like obligations;

(3) "Committee" means the Kentucky Private Activity Bond Allocation Committee;

(4) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;

(5) "Issued" means delivered and paid for;

(6) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency;

(7) "Local project" means a project for which bonds are issued on behalf or for the benefit of an entity which is not a state agency;

(8) "Single issuer pool" means the portion of the state ceiling from which allocations are made to any issuer;

(9) "Staff" means the Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet.

(10) [(6)] "State ceiling" means the cap imposed by Section 146 of the Code on private activity bonds issued within the Commonwealth of Kentucky;

(11) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency;

(12) "State project" means a project for which bonds are issued on behalf or for the benefit of a state agency; and

(13) [(7)] "Year" shall mean calendar year.

Section 2. Allocation of State Ceiling for Private Activity Bonds.

(1) On January 1 of each year, the state ceiling for private activity bonds shall be divided into two (2) separate pools, a state issuer pool and a local issuer pool. Sixty (60) percent of the state ceiling shall be reserved for the local issuer pool and forty (40) percent shall be reserved for the state issuer pool. On and after July 1 of each year, any remaining unallocated portion of the state ceiling in the state issuer pool shall revert to the single issuer pool. On October 1 of each year, any remaining unallocated state ceiling in the local issuer pool shall revert to the single issuer pool. On and after October 1 of each year, any remaining unallocated portion of the single issuer pool shall be allocated on a first come, first-served basis, subject to the limitations of KRS 103.286(2)(a).

Section 3. Allocations For Local Projects. Prior to October 1 of any year the committee shall not allocate a portion of the state ceiling for any project in an aggregate principal amount greater than ten (10) percent of the amount of the local issuer pool.

Section 4. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling prior to October 1 shall be evaluated by the committee using the following criteria:

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

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

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

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

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

Section 5. Committee Meetings. The committee shall meet at least quarterly to allocate the state ceiling. Special meetings may be held on the call of the committee (chairman).

~~[Section 2. General. The state ceiling on private activity bonds shall be allocated among all issuers on a first come, first served basis, subject, however, to the limitations of KRS 103.286(2)(a). On and after October 1, of each year, any remaining unallocated portion of the sixty (60) percent of the state ceiling reserved for local bond issuance authorities by KRS 103.286(2)(a), shall be available for allocation among all issuers on a first come, first served basis.]~~

Section 6. [3.] Obtaining Confirmations in Advance-notice of Intent[; Notice of Issuance]. The committee shall issue a confirmation allocating to the issuer a portion of the state ceiling equal to the amount of the bonds proposed to be issued. No affected bonds shall be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. A confirmation [An allocation of a portion of the state ceiling] authorizing the issuance of affected bonds shall be obtained by the filing by or on behalf of the issuer with the committee of a written notice of intention to issue such bonds (the "notice of intent"). ~~[The committee shall issue a confirmation allocating to the issuer a portion of the state ceiling equal to the amount of the bonds proposed to be issued.]~~ Confirmations shall be dated and numbered in the order issued. ~~[The committee shall endeavor to issue confirmations in the same order in which properly completed notices of intent to issue bonds are received by the committee.]~~

Section 7. Notice of Issuance - Original Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar

days from the date of issuance by the committee, or December 15, whichever is earlier. ~~[4. Original Confirmation Effective for Sixty (60) Days; First Renewal of Confirmation for Thirty (30) Days. (1) A confirmation shall expire sixty (60) calendar days from the date of issuance by the committee.]~~ The issuer shall deliver to the committee a notice that the affected bonds have been issued. The notice of issuance shall be transmitted by means the issuer may select, but shall be sent in time sufficient to allow the notice to reach committee by the close of business on the 60th day after the confirmation. If such period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

~~[(2) If for any reason the affected bonds are not issued within the initial confirmation period the issuer may file with the committee a new notice of intention to issue bonds. Such new notice shall not be filed more than five (5) business days before the end of the initial confirmation period. A new confirmation shall be issued on the basis of the new notice of intention to issue bonds which shall be effective for thirty (30) calendar days from the date of issuance. If notice of the issuance of the affected bonds is not received by the committee from the issuer by the close of business on the 30th day after the date of issuance of the new confirmation, the new confirmation shall expire, and shall not be extended or reissued. If the thirty (30) day confirmation period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.]~~

Section 8. ~~[5.]~~ Subsequent Renewals - Thirty (30) Day Waiting Period. If the applicable bonds are not issued within such ninety (90) day period ~~[(sixty (60) days plus thirty (30) days),]~~ no new notice of intent for a project consisting of all or any part of the project described in any prior notice of intent may be filed until the expiration of thirty (30) days following the expiration of the last confirmation. If so filed, the confirmation issued upon such new notice of intent shall expire ~~[within]~~ thirty (30) days after the date of such subsequent confirmation.

Section 9. ~~[6.]~~ Supplementary Confirmation for Excess Amounts Required. If the amount of affected bonds proposed to be issued is insufficient to pay the costs of the proposed project, an issuer may file with the committee a supplementary notice of intention to issue additional bonds. The committee shall confirm the supplementary notice of intention to issue bonds, if any, by a supplementary confirmation. ~~[The supplementary confirmation shall be given priority as to the increased amount of the proposed bond issue according to the date and amount of the supplementary notice of intention to issue bonds.]~~ The supplementary confirmation shall expire on the date of the confirmation that it supplements.

Section 10. ~~[7.]~~ Issuance of Bonds in Lesser Amounts than Confirmation - ~~[\$100,000 or]~~ Eighty-five (85) Percent Requirement. A confirmation shall be effective as to affected bonds issued in amounts less than the confirmed amount, provided that the face amount of the bonds issued is not less than ~~[the greater of \$100,000, or]~~ eighty-five (85) percent of the confirmed amount of the affected bonds. The issuer shall notify the committee if the bonds issued are within the limits expressed herein and the unused part of the allocation shall revert to the issuer pool from which the allocation was made, or to a single issuer pool after July 1 of any year. ~~[state ceiling and be available for allocation among all issuers on a first come, first served basis.]~~

Section 11. ~~[8.]~~ Elective Carry Forward. Any issuer may file with the committee by December 31, of each year, in which the state ceiling exceeds the aggregate amount of private activity bonds issued during the preceding calendar year, a "carry forward notice of intent" and a "carry forward election of unused private activity bond volume

cap" (currently, U.S. Treasury Department Form 8328), for the carry forward to the next calendar year, for any purpose authorized by Section 146(f) of the Internal Revenue Code of 1986, of an unallocated portion of the state ceiling. The committee shall issue a carry forward confirmation confirming the notice and election to carry forward the unused portion of the state ceiling. Failure to file the carry forward notice and election forms by December 31, shall not adversely affect an issuer's right to carry forward under this section, provided such forms are filed with the committee within a reasonable time after December 31, of the preceding year, and, in any event, within a time frame acceptable to the Internal Revenue Service.

Section 12. ~~[9.]~~ Confirmations. No confirmations of notices of intent to issue affected bonds shall be issued by the committee ~~after~~ ~~[when]~~ the total aggregate amount of bonds for which confirmations, including carry forward confirmations, issued during the year equals the state ceiling for that calendar year.

Section 13. ~~[10.]~~ Form and Manner. The forms for notices and confirmations required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation. ~~[The committee shall prescribe forms for notices and confirmations required to be filed with and issued by the committee under this administrative regulation.]~~ No issuer shall file a notice of intent to issue affected bonds sooner than will reasonably permit issuance of the bonds within the time frame established by Section 7 ~~[4]~~ of this administrative regulation, nor seeking an allocation of the state ceiling in excess of the amount reasonably required to pay the costs of the project to be financed through sale of the proposed bonds.

Section 14. ~~[11.]~~ Delegation of Functions. The committee will review and allocate all requests for state ceiling. No delegation of authority to make allocations of the state ceiling to staff shall be made except for in cases of surplus or carry-forward allocations for which the committee gives specific authority to staff. ~~[The committee may delegate to its staff authority to receive from issuers notices of intent to issue bonds, and notices of issuance of bonds, and to issue on behalf of the committee, confirmations, supplemental confirmations, and carry forward confirmations, but no such delegation shall authorize the staff to issue a confirmation, supplemental confirmation or carry forward confirmation for a proposed bond issue of more than \$25,000,000.]~~ Such delegations of authority, including limits thereto, shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 15. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Notice of Intent" application (September 1995);
- (b) "Confirmation of Allocation of State Ceiling" (September 1995);
- (c) "Confirmation of Carry-forward Allocation of State Ceiling" (September 1995); and
- (d) "Notice of Issuance" (September 1995).

(2) Copies of the forms may be inspected, copied or obtained at the Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at noon

GENERAL GOVERNMENT CABINET  
Real Estate Commission  
(As Amended)

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS Chapter 324

STATUTORY AUTHORITY: KRS 324.160(1)(e), (j), 324.282, 324.285(5)

NECESSITY AND FUNCTION: Confusion exists among brokers and sales associates, and consumers, about the various agency relationships which exist in real estate brokerage transactions. This administrative regulation establishes the types of relationships between brokers, sales associates, and consumers, and required forms; and informs the consumer of rights and duties of brokers, sales associates, and consumers. [A form describing these relationships and informing the consumer of who is representing him and who is representing others, is necessary to eliminate this confusion.]

Section 1. Definitions. (1) "Delivery" means delivery of an item to a prospective party or his agent by:

- (a) Mail;
- (b) FAX transmission;
- (c) Messenger; or
- (c) Hand.

(2) "First contact" means the period:

(a) Before a contract containing a duty of representation and compensation is entered into by a:

- 1. Prospective party who does not have an agent; and
- 2. Licensee who has offered to represent him.

(b) Before the beginning of discussions relating to a real estate transaction between a:

- 1. Prospective party who does not have an agent; and
- 2. Licensee who has proposed to discuss the real estate transaction with him.

(3) "First substantial contact" means the period before a written offer to purchase is presented.

(4) "Prospective party" means a person who:

- (a) Enters a listing contract as a seller;
- (b) Enters a buyer broker agreement as a buyer; or

(c) Seeks or uses the services of a person licensed by the Kentucky Real Estate Commission.

(5) "Prospective party who is represented by an agent" means a person who has entered into a current listing contract, or buyer broker agreement with a licensee.

Section 2. Prospective Party Information. (1) A licensee shall deliver to a prospective party an:

(a) "Agency Information For Consumers Bulletin", on the first contact; and

(b) "Agency Disclosure Form", on the first substantial conduct.

(2) An "Agency Disclosure Form" shall:

(a) Be signed by each:

- 1. Prospective party to the transaction; and
- 2. Licensee involved in the transaction; and

(b) Identify:

1. Each prospective party known to the licensee making the disclosure; and

2. If a prospective party is represented by an agent, the name of the agent, his real estate company, and whom they represent;

3. The real estate that is the subject of the negotiation;

(c) Describe the personal, family, or business relationships between:

- 1. The licensee making the disclosure; and
- 2. Each prospective party known to the licensee at the time

the disclosure is made;

(d) State whether the licensee making the disclosure is acting as a principal as a prospective:

- 1. Seller;
- 2. Buyer;
- 3. Lender; or
- 4. Investor.

(3) The "Agency Disclosure Form" and the "Agency Information For Consumers Bulletin" required by subsection (1) of this section shall be:

(a) The "Agency Disclosure Form Approved By Kentucky Real Estate Commission", and the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission"; or

(b) An Agency Disclosure Form, and Agency Information For Consumers Bulletin, that have been developed by the licensee and approved by the commission.

(4)(a) An "Agency Information For Consumers Bulletin" developed by a licensee:

(a) Shall consist of the material contained in the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission"; and

(b) May contain a licensee's logo and be in a format that differs from the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission".

(5)(a) An "Agency Disclosure Form" or "Agency Information For Consumers Bulletin" that has been developed by the licensee, shall be submitted to the commission for approval.

(b) The general counsel of the commission shall:

- 1. Review the form or bulletin;
- 2. Make a recommendation to the commission that the form or bulletin be approved or disapproved; and
- 3. Inform the licensee of the commission's decision.

Section 4. Commission Review of Licensee Documents. The commission shall:

(1) Review licensee listing agreements, buyer broker agreements, and purchase agreements;

(2) Approve agreements that it determines contain the information required by this administrative regulation; and

(3) Inform licensees of commission action.

Section 5. Incorporation By Reference. (1) The following documents are incorporated by reference:

(a) "Agency Disclosure Form Approved By Kentucky Real Estate Commission (Sep-07-1995)"; and

(b) "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission (Sep-07-1995)".

(2) They may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville Kentucky 40223, 8 a.m. to 4:30 p.m., Monday through Friday.

[Section 1. Each person licensed by the Kentucky Real Estate Commission shall deliver to a prospective party:

(1) An "agency information for consumers bulletin", at their first contact.

(2) An "agency disclosure form" at their first substantial contact.

Section 2. The first contact means:

(1) In the case of prospective parties who do not have an agent and whom the licensed person proposes to represent, before a contract which contains a duty of representation and of compensation is entered.

(2) In the case of prospective parties who do not have an agent, and with whom the licensed person proposes to discuss a real estate transaction before any such discussions occur.

## ADMINISTRATIVE REGISTER - 718

~~Section 3. The first substantial contact means before a written offer to purchase is presented.~~

~~Section 4. A prospective party means any person:~~

- ~~(1) Who enters a listing contract as a seller;~~
- ~~(2) Who enters a buyer broker agreement as a buyer; or~~
- ~~(3) Who seeks or uses the services of a person licensed by the Kentucky Real Estate Commission.~~

~~Section 5. Prospective parties who are represented by an agent means a person who has entered into a current listing contract or buyer broker agreement with a person licensed by the Kentucky Real Estate Commission.~~

~~Section 6. Delivery means delivery to the prospective party, or to their agent, by mail, FAX transmission, messenger delivery or in-hand delivery.~~

~~Section 7. An approved "agency disclosure form" shall:~~

- ~~(1) Be in writing.~~
- ~~(2) Be signed by all prospective parties to the transaction and by all persons licensed by the KREC who are involved in the transaction.~~
- ~~(3) Identify:~~
  - ~~(a) The prospective parties known to the person making the disclosure.~~
  - ~~(b) In the case of prospective parties who are represented by an agent, the name of the agents and their real estate company, and whom they represent.~~
  - ~~(c) The real estate which is the subject of the negotiation.~~
  - ~~(d) A description of all personal, family or business relationships between the person making the disclosure and all prospective parties known at the time the disclosure is made.~~
  - ~~(e) A statement whether the person making the disclosure is or is not acting as a principal, either as a prospective seller, buyer, lender or investor.~~

~~Section 8. An "agency information for consumers bulletin" shall contain:~~

- ~~(1) An explanation of the relationships:~~
  - ~~(a) Between a real estate licensee and the prospective party he represents, namely that the agent owes a fiduciary duty to such prospective party as his client.~~
  - ~~(b) Between a real estate licensee and the prospective party he is not representing, namely that the licensee owes a duty of good faith and honesty, as his customer, but that the licensee must inform his client, if he has one (1) of all information given by the prospective party he does not represent.~~
  - ~~(c) Between a real estate licensee and multiple prospective parties he represents.~~
- ~~(2) A statement that the obligation on the part of a prospective party to pay the fees generated for brokerage services does not by itself create a fiduciary obligation owing to that prospective party.~~

~~Section 9. Whenever the information provided in an "agency disclosure form" changes, then a new form with the new information shall be prepared and delivered according to the provisions of this administrative regulation.~~

~~Section 10. The Kentucky Real Estate Commission:~~

- ~~(1) Shall review all "agency disclosure forms" and "agency information for consumer bulletins" submitted to it, and if they are found to be in compliance with the provisions of this administrative regulation, shall approve them and inform the person or association which submitted the form of the approval.~~
- ~~(2) Shall review all listing agreement, buyer broker agreement, and purchase agreement, forms submitted to it, and if they are found to contain the information required by this administrative regulation,~~

~~shall approve them and inform the person, company or association which submitted the form of the approval.~~

~~(3) Shall prepare an approved "agency disclosure form" and an approved "agency information for consumers bulletin" which complies with the provisions of this administrative regulation which may be used by persons licensed by it.~~

~~(4) May discipline a person licensed by it under the provisions of KRS 324.160(1)(g) for violating the requirements of this administrative regulation.]~~

GEORGE SIRK, Chairman

APPROVED BY AGENCY: April 19, 1995

FILED WITH LRC: May 9, 1995 at 9 a.m.

### TOURISM CABINET Department of Fish and Wildlife Resources (As Amended)

#### 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 Greenbe 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 shall be [ie] 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;

## ADMINISTRATIVE REGISTER - 719

- (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 ~~for 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:

- (1) Greenbo Lake, Greenup County;
- (2) Pan Bowl Lake, Breathitt County; and
- (3) 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.

**COMPILER'S NOTE:** The following two administrative regulations, 307 KAR 1:030 and 307 KAR 4:010, were amended by the promulgating agency and the Interim Joint Committee on Economic Development and Tourism, and became effective on August 17, 1995.

### ECONOMIC DEVELOPMENT CABINET Kentucky Economic Development Finance Authority (As Amended)

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

RELATES TO: KRS 154.22-010 through 154.22-070

STATUTORY AUTHORITY: KRS 154.22-040(2)

NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application processes and project selection criteria for the Kentucky Rural Economic Development Act Tax Credit Program established pursuant to KRS 154.22-010 through 154.22-070.

Section 1. Definitions. (1) "Act" means KRS 154.22-010 through 154.22-070.

(2) "Affiliate" is defined in KRS 154.22-010.

(3) "Agribusiness" is defined in KRS 154.01-010.

(4) "Approved company" is defined in KRS 154.22-010.

(5) "Authority" is defined in KRS 154.22-010.

(6) "Commonwealth" is defined in KRS 154.22-010.

(7) "Economic development project" is defined in KRS 154.22-010.

(8) "Eligible company" is defined in KRS 154.22-010.

(9) "KRS" means the Kentucky Revised Statutes, as they may be amended from time to time.

(10) "Manufacturing" is defined in KRS 154.22-010.

Section 2. Economic Development Project; Acquisition of Real Estate. "Economic development project" shall include, for purposes of acquisition of real estate by an approved company or its affiliate, the possession of land pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, which is incorporated by reference in Section 7 of this administrative regulation.

Section 3. Eligible Company; Corporation. "Eligible company" shall include as a corporation a limited liability company and foreign limited liability company each as defined in KRS 275.015 and as a partnership a registered limited liability partnership as defined in KRS 362.155.

Section 4. Eligibility Standards. (1) The authority shall approve eligible companies based upon the information supplied to the authority in the application, pursuant to Section 5(1)(a) through (o) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Rural Economic Development Act Tax Credit Program the authority shall give greatest weight to the information supplied in the application pursuant to Section 5(1)(e) through (j) of this administrative regulation.

Section 5. Kentucky Rural Economic Development Act Tax Credit Program. (1) Companies that wish to participate in the Kentucky Rural Economic Development Act Tax Credit Program shall file an application with the authority. The following information and materials shall be submitted as part of the application:

(a) A brief history of the business of the eligible company and a description of the economic development project;

(b) General information about the eligible company, including company ownership;



## ADMINISTRATIVE REGISTER - 720

(c) Information regarding the eligible company's attorney, primary bank, project lender and accountant;

(d) The current number of jobs at the facility;

(e) Copies of the eligible company's financial statement for the most recent fiscal year end;

(f) The projected number of jobs to be created at the facility;

(g) The total number of jobs projected two (2) years after completion of the economic development project;

(h) The number of jobs retained because of the economic development project;

(i) The number of managerial and technical jobs and skilled, semiskilled and unskilled jobs (based on the level of specialized training required to perform the particular job competently), created by the economic development project and the average hourly wage and average salary for each job category. For purposes of the foregoing sentence, the term "unskilled" describes those jobs which require no specialized training to perform the job competently. Likewise, "semiskilled" describes those jobs which require forty (40) hours or less training to perform the job competently. [and] "Skilled labor" shall designate:

1. Those possessing a certificate or degree from an accredited vocational-technical school, college or university;

2. Persons who have been independently licensed in a specific occupation, and who, as a requirement for employment in a job category, must hold such a certificate or diploma; or

3. Persons who have completed an apprenticeship as a requirement for being certified by a union. [describes those jobs which require more than forty (40) hours of training to perform the job competently or which require licenses or certifications in order to be able to perform the job.]

The term "managerial" describes those jobs which primarily involve supervising other employees of the company. The term "technical" describes those jobs which involve an expertise or knowledge specific to the particular industry of the eligible company. Those jobs which are described by both "technical" and another category shall be classified as "technical". [The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the economic development project and the average hourly wage and average salary wage of such job categories;]

(j) Estimated annual revenues and expenses for a three (3) year period after the date of commencement of operations of the business of the eligible company at the site of the economic development project;

(k) Estimated project costs and a breakdown of these costs;

(l) Proposed project financing;

(m) If the economic development project constitutes a new location for the eligible company, information related to the project site including whether the project consists of new construction or acquisition of an existing facility;

(n) If the economic development project is an expansion of the existing manufacturing or agribusiness facilities of the eligible company, information related to the project site, including whether it is owned or leased by the eligible company;

(o) A letter from the eligible company representing that but for the inducements to be offered by the authority the company would not have located its economic development project in the Commonwealth; [A detailed explanation setting forth the reasons why the economic development project will not otherwise occur in the Commonwealth without the approval of the inducements;]

(p) A letter from the appropriate local elected official (Mayor and/or County Judge-Executive) endorsing the project;

(q) 1. A completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form.

2. The Disclosure Statement and Data Form are incorporated by reference in Section 7 of this administrative regulation.

(2) The application to be filed with the authority shall contain notices of the following fees to be paid by the eligible company:

(a) An administrative fee of one-quarter (.25) of one (1) percent of the estimated approved costs for the entire period which is due and payable upon execution of the financing agreement;

(b) A \$500 nonrefundable application fee which is due and payable to the authority upon submission of the application;

(c) The one (1)-time \$2,500 fee required by KRS 154.35-042(1);

(d) The annual five (5) percent fee required by KRS 154.35-042(2); and

(e) The legal fees for the preparation of the financing agreement by the authority's counsel which are payable upon execution of the financing agreement.

(3) Pursuant to KRS 154.22-040 the authority may by resolution approve an eligible company after consideration of the application for the Kentucky Rural Economic Development Act Tax Credit Program if it determines the eligible company meets all the requirements of the act and this administrative regulation.

Section 6. Financing Agreement Contents. The authority may require the following information, as part of the negotiated terms of the financing agreement, in addition to the information required pursuant to KRS 154.22-050:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly financial reports to the authority;

(3) Annual certifications of debt service payments being made by the eligible company; and

(4) Access to the approved company's records.

Section 7. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The "Application for the Kentucky Rural Economic Development Act (KREDA) Tax Credit Program - KRS 154.22" which also includes the "Economic Development Incentive Disclosure Statement" and "Benefit Analysis Data Form" (June 12, 1995); and

(b) The "Statement of Financial Accounting Standards No. 13, Accounting for Leases" (June 1, 1989).

(2) Copies of the "statement" and the form of "application" referred to in subsection (1) of this section may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 15, 1995 at noon

### ECONOMIC DEVELOPMENT CABINET Kentucky Economic Development Finance Authority (As Amended)

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

RELATES TO: KRS 154.28-010 through 154.28-090

STATUTORY AUTHORITY: KRS 154.28-030(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application processes and project selection criteria for the Kentucky Industrial Development Act Tax Credit Program established pursuant to KRS 154.28-010 through 154.28-090.

Section 1. Definitions. (1) "Act" means KRS 154.28-010 through 154.28-090.

(2) "Agribusiness" is defined in KRS 154.01-010.

(3) "Approved company" is defined in KRS 154.28-010.

(4) "Authority" is defined in KRS 154.28-010.

(5) "Commonwealth" is defined in KRS 154.28-010.



- (6) "Economic development project" is defined in KRS 154.28-010.  
 (7) "Eligible company" is defined in KRS 154.28-010.  
 (8) "Inducement" is defined in KRS 154.28-010.  
 (9) "Manufacturing" is defined in KRS 154.28-010.

Section 2. Economic Development Project; Acquisition of Real Estate. "Economic development project" shall include for purposes of acquisition of real estate capital leases as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, which is incorporated by reference in Section 7 of this administrative regulation.

Section 3. Eligible Company; Corporation. "Eligible company" shall include as a corporation a limited liability company and foreign limited liability company each as defined in KRS 275.015 and as a partnership a registered limited liability partnership as defined in KRS 362.155.

Section 4. Eligibility Standards. (1) The authority shall approve eligible companies based upon the information supplied to the authority in the application, pursuant to Section 5(1)(a) through (g) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Industrial Development Act Tax Credit Program the authority shall give greatest weight to the information supplied in the application pursuant to Section 5(1)(a) through (d) of this administrative regulation.

Section 5. Kentucky Industrial Development Act Tax Credit Program. (1) Companies that wish to participate in the Kentucky Industrial Development Act Tax Credit Program shall file an application with the authority. The following information and materials shall be submitted as part of the application:

- (a) A brief history of the business of the eligible company and a description of the economic development project;
- (b) Copies of the eligible company's financial statements for the most current fiscal year end;
- (c) The projected number of employees to be hired in the future at the manufacturing or agribusiness facility of the eligible company from the commencement date of the financing agreement and as a result of the receipt of the inducements. For purposes of this subsection, a full-time job shall mean a job whose work week averages thirty-five (35) [thirty (30)] or more hours. As a part of its analysis pursuant to this paragraph the authority shall consider the following information:

- 1. The current number of full-time and part-time jobs at the project location;
- 2. The total number of full-time and part-time jobs projected two (2) years after project completion; and
- 3. The number of managerial and technical jobs and skilled, semiskilled and unskilled jobs (based on the level of specialized training required to perform the particular job competently), created by the economic development project and the average hourly wage and average salary for each job category. For purposes of the foregoing sentence, the term "unskilled" describes those jobs which require no specialized training to perform the job competently. Likewise, "semiskilled" describes those jobs which require forty (40) hours or less training to perform the job competently. [and] "Skilled labor" shall designate:

- a. Those possessing a certificate or degree from an accredited vocational-technical school, college or university;
- b. Persons who have been independently licensed in a specific occupation, and who, as a requirement for employment in a job category, must hold such a certificate or diploma; or
- c. Persons who have completed an apprenticeship as a requirement for being certified by a union. [describes those jobs

which require more than forty (40) hours of training to perform the job competently or which require licenses or certifications in order to be able to perform the job.]

The term "managerial" describes those jobs which primarily involve supervising other employees of the company. The term "technical" describes those jobs which involve an expertise or knowledge specific to the particular industry of the eligible company. Those jobs which are described by both "technical" and another category shall be classified as "technical". ~~[The number of skilled, semiskilled, unskilled, managerial and technical jobs to be created by the project and the average hourly wage and average salary wage of such job categories;]~~

(d) Estimated annual revenues and expenses for a three (3) year period after the date of commencement of operations of the business of the eligible company at the site of the economic development project;

(e) A statement from the eligible company that the project does or does not involve:

- 1. A relocation from an existing facility; or
- 2. The acquisition of an existing facility. [The effect on existing manufacturing or agribusiness facilities in the Commonwealth if the eligible company undertakes its economic development project within the Commonwealth;]

(f) A letter from the eligible company providing information required pursuant to KRS 154.28-080(4);

(g) The effect of an expansion on the existing manufacturing or agribusiness facilities of the eligible company;

(h) The lending source for the project;

(i) A letter from the appropriate local elected official (Mayor and/or County-Judge Executive) endorsing the project; and

(j) 1. A completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form.

2. The Disclosure Statement and Data Form are incorporated by reference in Section 7 of this administrative regulation.

(2) The application to be filed with the authority shall contain notices of the following fees to be paid by the eligible company:

- (a) An administrative fee of one-quarter (.25) of one (1) percent of the estimated approved costs for the entire period which is due and payable upon execution of the financing agreement;
- (b) A \$500 nonrefundable application fee which is due and payable to the authority upon the submission of the application;
- (c) The one (1)-time \$2,500 fee required by KRS 154.35-042(1);
- (d) The annual five (5) percent fee required by KRS 154.35-042(2); and

(e) The legal fees for the preparation of the financing agreement by the authority's counsel which are payable upon execution of the financing agreement.

(3) Pursuant to KRS 154.28-080(5) the authority may designate an eligible company to be an approved company after consideration of the application for the Kentucky Industrial Development Act Tax Credit Program if it determines the company meets all the requirements of the Act and this administrative regulation.

Section 6. Financing Agreement Contents. The authority may require the following additional information as a part of the negotiated terms of a financing agreement pursuant to KRS 154.28-090:

- (1) Annual, quarterly or monthly progress reports to the authority;
- (2) Annual, quarterly or monthly financial reports to the authority; and
- (3) Access to the approved company's records.

Section 7. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The "Application for the Kentucky Industrial Development Act ("KIDA") Tax Credit Program-KRS 154.28" which also includes the "Economic Development Incentive Disclosure Statement" and "Benefit Analysis Data Form" (June 12, 1995); and

(b) The "Statement of Financial Accounting Standards No. 13, Accounting for Leases" (June 1, 1989).

(2) Copies of the "statement" and the form of "application" referred to in subsection (1) of this section may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 15, 1995 at noon

**WORKFORCE DEVELOPMENT CABINET**  
**State Board for Adult and Technical Education**  
**(As Amended)**

**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, 151B.150

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 statutory mission [strategic plan] of the Workforce Development Cabinet, Department for Technical Education, Office of Kentucky TECH, and the Kentucky State Plan for Vocational Technical Education, as incorporated by reference in 780 KAR 1:010, Section 2. [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 2. ~~[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 3. ~~[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

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

**WORKFORCE DEVELOPMENT CABINET**  
**State Board for Adult and Technical Education**  
**(As Amended)**

**780 KAR 2:020. ~~[Occupational]~~ Appeals process ~~[officer]~~.**

RELATES TO: KRS 151B.025, 151B.030, 151B.110

STATUTORY AUTHORITY: KRS 151B.025, 151B.110, 151B.150

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 [embudsman] 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 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 [or] 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.

**WORKFORCE DEVELOPMENT CABINET**  
State Board for Adult and Technical Education  
(As Amended)

**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 transfers from the Kentucky Department of Education to the Department for Technical Education all responsibilities for programs, staff, and operations at state-operated area vocational education centers and state vocational technical schools existing as of July 1, 1990. This statute also mandates that the area vocational education centers shall be operated in compliance with program standards established by the State Board for Elementary and Secondary Education. The State Board for Elementary and Secondary Education has set program standards in 705 KAR 3:141. This administrative regulation sets standards for operations for Kentucky TECH schools primarily serving secondary students through the use of steering and advisory committees. 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];
- (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.

**WORKFORCE DEVELOPMENT CABINET**  
**State Board for Adult and Technical Education**  
**(As Amended)**

**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, 151B.150

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

**WORKFORCE DEVELOPMENT CABINET**  
**State Board for Adult and Technical Education**  
**(As Amended)**

**780 KAR 2:040. Live work projects~~[selection of]~~.**

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.025, 151B.110, 151B.150

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 [is 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" means [is] a project, which meets a curriculum requirement, 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 shop]~~, nor shall they be responsible for the theft or loss of any article or articles that may be left in the schools ~~[vocational shop]~~ 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.

**WORKFORCE DEVELOPMENT CABINET**  
**State Board for Adult and Technical Education**  
**(As Amended)**

**780 KAR 2:060. Suspension and expulsion of students.**

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: KRS 151B.110 and 151B.150 give~~[e]~~ 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] following [and largely adopts] the grounds and procedures [for such] set forth in KRS 158.150 for the common schools.

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 the charge or charges [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

## ADMINISTRATIVE REGISTER - 734

specified by the State Board for Adult and Technical Education in 780 KAR 3:140.

J. LARRY STINSON, Chairman  
APPROVED BY AGENCY: April 21, 1995  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**780 KAR 4:050. Certificate requirements for Kentucky TECH students.**

RELATES TO: KRS 151B.110  
STATUTORY AUTHORITY: KRS 151B.095, 151B.110, 151B.150  
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 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. This document, effective June 1, 1995, is incorporated by reference and hereinafter shall be referred to as the Kentucky Program Listing for Kentucky TECH as amended for 1995-1996. The document is available for public inspection and copying at the main office of the Department for Technical Education, Capital Plaza Tower, Third Floor, 500 Mero Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday-Friday.

Section 2. Continuing Education Certificate. To be awarded a continuing education certificate, a student shall have successfully completed a continuing education course or set of courses. [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  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**780 KAR 4:060. Kentucky TECH guarantee.**

RELATES TO: KRS 151B.110  
STATUTORY AUTHORITY: KRS 151B.095, 151B.110, 151B.120  
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 establishes ~~[allows the establishment of]~~ the Kentucky TECH guarantee.

Section 1. A graduate of a diploma level vocational-technical program shall ~~[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  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**780 KAR 5:010. Institutional courses, approval of.**

RELATES TO: KRS 151B.110, 151B.150  
STATUTORY AUTHORITY: KRS 151B.110, 151B.145, 151B.150, 38 USC 3670 et seq.

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, the Veterans Education Branch of the Department for Technical Education on [such] forms and in the [such] manner ~~[as]~~ prescribed by the State Board for Adult and Technical Education in this administrative regulation.

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 38 USC 3675 ~~[Section 3675-1775]~~, 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 38 USC 3675 ~~[Section 3675-1775]~~, 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 specified in 780 KAR 3:140. ~~[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  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**780 KAR 5:020. Apprenticeship and OJT courses, approval of.**

RELATES TO: KRS 151B.110, 151B.150  
STATUTORY AUTHORITY: KRS 151B.110, 151B.145, 151B.150, 38 USC 3670 et seq.

NECESSITY AND FUNCTION: To establish a procedure and



## ADMINISTRATIVE REGISTER - 735

[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, the Veterans Education Branch of the Department for Technical Education. [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  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

#### 780 KAR 5:030. Revisions and amendments approval.

RELATES TO: KRS 151B.110, 151B.150  
STATUTORY AUTHORITY: KRS 151B.110, 151B.145, 151B.150,  
38 USC 3670 et seq.  
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, the Veterans Education Branch of the Department for Technical Education for [such] approval [as may be needed].

J. LARRY STINSON, Chairman  
APPROVED BY AGENCY: April 21, 1995  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

#### 780 KAR 5:040. Denial or revocation of approval.

RELATES TO: KRS 151B.110, 151B.150  
STATUTORY AUTHORITY: KRS 151B.110, 151B.145, 151B.150,  
38 USC 3670 et seq.  
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, the Veterans Education Branch of the Department for Technical Education [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  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

#### 780 KAR 5:050. Inspection and supervision.

RELATES TO: KRS 151B.110, 151B.150  
STATUTORY AUTHORITY: KRS 151B.110, 151B.145, 151B.150,  
38 USC 3670 et seq.  
NECESSITY AND FUNCTION: To provide a means of withholding or withdrawing approval in any case that fails to conform to required standards. KRS 151B.150 vests with the State Board for Adult and Technical Education the authority to carry out the purposes of vocational education and the provisions of the Acts of Congress accepted by KRS 151B.145, and gives the State Board for Adult and Technical Education all necessary power and authority in promulgating administrative regulations and administering vocational education. This administrative regulation sets monitoring standards for approving training institutions provided training of veterans, reservists and other eligible persons under 38 USC 3670 et seq.

Section 1. The state approving agency, the Veterans Education Branch, [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 to ascertain continuing compliance. [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  
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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

#### 780 KAR 7:010. Definitions.

RELATES TO: KRS 151B.110, 151B.150  
STATUTORY AUTHORITY: KRS 151B.025, 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.

(2) "Construction" for Kentucky TECH schools means construction of new buildings and acquisition, expansion, remodel-

ing, and alteration of existing buildings, and includes site grading and improvement as well as architect fees.

(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.

(4) "Equipment" for Kentucky TECH schools 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) Retains its original shape and appearance with use;

(b) Is nonexpendable. 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) Costs 100 dollars or more; and

(d) Does not lose its identity through incorporation into a different or more complex unit or substance.

(5) "Facility maintenance" for Kentucky TECH schools means maintenance of the facility which includes all equipment and systems considered to be permanently installed as part of the facility.

(6) "Maintenance" for Kentucky TECH schools 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.

(7) "Operation" for Kentucky TECH schools means management of the education program offered in the facility and the necessary and ancillary services including the cost of salaries, equipment, supplies, materials, and transportation of students which are involved in the instructional program, and may include, but is not limited to, other reasonable costs of services and supplies needed in providing janitorial services and replacement of expendable supplies.

(8) "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, and may include health occupations centers, advanced technical centers, or technical institutes.

(9) "Replacement equipment" for Kentucky TECH schools means those equipment items purchased to replace items that already exist in a vocational-technical program.

(10) "Supplies" for Kentucky TECH schools means any article or material which meets any one (1) or more of the following conditions:

(a) Is consumed in use;

(b) Loses its original shape or appearance with use;

(c) Is expendable. 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) Costs less than 100 dollars; or

(e) Loses its identity through incorporation into a different or more complex unit or substance.

(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 workforces. 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, 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

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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

780 KAR 7:020. Area technology center facility [or public high school,] standards [for department of].

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.025, 151B.110, 151B.150

NECESSITY AND FUNCTION: To establish facility [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 the following standards:

(1) The facility shall be used principally for providing technical education to secondary students who are available for study in preparation for entering the labor market.

(2) The facility shall provide the vocational preparation component of the educational program for students who are fifteen (15) years of age or older.

(3) The facility shall provide for occupational preparation programs and the appropriate related instruction. The types of programs and related instruction to be offered shall be approved by the Commissioner for Technical Education and in compliance with administrative regulations for secondary students established by the State Board for Elementary and Secondary Education in 705 KAR 4:231. [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. [(6)] Each vocational technical education program offered in the facility shall meet the minimum state requirements for teachers, curriculum, and equipment.

Section 3. The area technology center shall be available, on a need basis, to offer programs for postsecondary students.

Section 4. The area technology center shall have sufficient land for building, expansion, and parking.

~~{(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.

**WORKFORCE DEVELOPMENT CABINET**  
**State Board for Adult and Technical Education**  
**(As Amended)**

**780 KAR 7:030. Regional technology center facility [Vocational-technical, public or state] standards.**

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.025, 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 following standards:

(1) The center shall be used principally to provide postsecondary technical education for persons who have completed or left high school and who are available for study in preparation for entering the labor market.

(2) The center shall offer a variety of occupational programs and related academic instruction to meet the labor market needs.

(3) The regional technology center shall provide adequate space and adaptability for the program activities and number of work stations unique to each program offered in the center.

(4) Classrooms, laboratories, resource centers, and other facilities including instructional equipment and supplies shall be provided in quantity and quality to accomplish the objectives in the vocational-technical curriculum.

(5) The regional technology center shall have sufficient land for building, expansion, and parking. [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.

**WORKFORCE DEVELOPMENT CABINET**  
**State Board for Adult and Technical Education**  
**(As Amended)**

**780 KAR 7:032. Corrections education center facility 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 following standards:

(1) The corrections education center shall be used exclusively for providing a variety of occupational training and general education programs to incarcerated students in preparation for entering the workforce or continuing postsecondary education.

(2) Facilities must provide adequate space and adaptability for the program activities, related instruction, and assessment.

(3) Classrooms, laboratories, resources, and other facilities shall be provided in quantity and quality to accomplish the objectives in the vocational-technical curriculum. [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

## ADMINISTRATIVE REGISTER - 739

Education and approved by the State Board for Adult and Technical Education.]

(1) The curriculum in corrections education centers shall be consistent with the programs listed in the Kentucky TECH Program Listing which is incorporated by reference in 780 KAR 4:050.

(2) The entry/exit requirements for programs shall be those established by the State Board of Adult and Technical Education and listed in the Kentucky TECH Program Listing incorporated by reference in 780 KAR 4:050.

(3) Equipment, instructional materials, and supplies shall be sufficient to support the number of work stations in the instructional program.

(4) Appropriate technical reading materials and study areas shall be available to the inmate students.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**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, 151B.150

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

### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**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 education 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 the budget of the Commonwealth. [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.

### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**780 KAR 7:060. Equipment inventory.**

RELATES TO: KRS 45.301, 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 equipment [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 equipment [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

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### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**780 KAR 7:070. Equipment insurance.**

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 56.070-56.180, 151B.110, 151B.150

## ADMINISTRATIVE REGISTER - 740

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 education centers]~~ shall be covered by the State Fire and Tornado Insurance Fund regular policy underwritten by the Commonwealth of Kentucky except:

(1) Equipment insured for full coverage under the state computer insurance policy. ~~[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.

### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (As Amended)

**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, **151B.150**

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

### LABOR CABINET Department of Workers' Claims (As Amended)

**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[s], individual self-insured employer[s] and ~~[self-insured]~~ group[s] 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 medical necessity ~~[reasonableness, frequency, duration]~~ and appropriateness of medical care and services for purposes of determining the availability of payment for compensable injuries or diseases. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 are not subject to utilization review under this administrative regulation. ~~[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 medically ~~[reasonably]~~ necessary and ~~[ ]~~ 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)]~~ Each ~~[All]~~ insurance carrier[s], individual self-insured employer[s], and ~~[self-insured]~~ group[s] self-insurer[s] 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[s] Requirements. No later than December 1, 1995 ~~[October 1, 1995, all]~~ insurance carrier[s], individual self-insured employer[s] and ~~[self-insured]~~ group[s] 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 shall be ~~[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 resource[s] 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 ~~and~~ ~~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, 1996 ~~1995~~;

(8) ~~(7)~~ A system for promptly notifying treating physicians and other providers of utilization review denials. Notices of denials shall contain a statement of the reasons for denial, the name, state of licensure and medical license number of the reviewer, and reconsideration rights. ~~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.~~ Payment ~~of statements~~ for medical services ~~and requests for preauthorization~~ shall ~~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) A description of the policies and procedures to assure that the reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days/week, forty (40) hours/week during normal business hours.

(12) ~~(11)~~ ~~(10)~~ A description of a reconsideration ~~an appeal~~ process, within the structure of utilization ~~utilize~~ review and medical bill audit, whereby initial determinations may be appealed. Any medical provider may request reconsideration by the utilization reviewer or medical bill auditor. Reconsideration ~~Review~~ of the initial utilization review decisions shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A decision shall be rendered within twenty-one (21) ~~thirty (30)~~ ~~fifteen (15)~~ days of receipt of a request for reconsideration ~~appeal~~

late review]. If the denial is upheld, upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, the provider may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty; a final decision shall be rendered within ten (10) days of the request for specialty reconsideration. The carrier's obligation to render payment is tolled during the period of reconsideration. 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

(13) ~~(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

**CABINET FOR HUMAN RESOURCES  
Department for Social Insurance  
Division of Management and Development  
(As Amended)**

**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

(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 (CWEP)]~~ 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



## ADMINISTRATIVE REGISTER - 745

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 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.

**CABINET FOR HUMAN RESOURCES**  
**Department for Social Insurance**  
**Division of Management and Development**  
**(As Amended)**

**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 [ie 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~~
      - ~~(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. Kentucky statutory citations, if applicable;

3. The state administrative regulations; and

4. ~~[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 accused 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.

(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.

**CABINET FOR HUMAN RESOURCES**  
**Department for Medicaid Services**  
**(As Amended)**

**907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

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 method for determining amounts payable by the cabinet for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) ~~[(7)]~~ "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(2) ~~[(4)]~~ "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Cost shall be considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(3) ~~[(2)]~~ "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services shall be ~~[(are)]~~ limited to the following:

- (a) Physical, occupational and speech therapy;
- (b) Laboratory procedures;
- (c) X-ray;
- (d) Oxygen and other related oxygen supplies;
- (e) Respiratory therapy (excluding the routine administration of oxygen);

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and

(g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) ~~[(8)]~~ ~~The~~ "Basic per diem cost" means for each major cost category (nursing services costs and all other costs) shall be the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) ~~[(10)]~~ "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(7) ~~[(9)]~~ "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(8) "ICF-MRs" means intermediate care facilities for the mentally retarded.

(9) ~~[(11)]~~ "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(10) ~~[(17)]~~ "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(11) ~~[(4)]~~ "Nursing facilities with waiver (NFs-W)" means facilities certified to the Medicaid Program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(12) ~~[(3)]~~ "Nursing facility (NFs)" means a facility certified to the Medicaid Program by the state survey agency as meeting all nursing facility requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The

## ADMINISTRATIVE REGISTER - 750

phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b)

(4)(C)(ii), unless the context specifies otherwise.

(13) [(46)] "Nursing facility with a mental retardation specialty (NF-MRS)" means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(14) [(6)] "Nursing services costs" means the direct costs associated with nursing services.

(15) [(43)] "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(16) "PRO" means peer review organization.

(17) [(44)] "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(18) [(45)] "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include ~~but are not limited to~~ the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(19) [(42)] "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities (NFs) (including nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services.

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program.

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the cabinet to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet and contained in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual, revised July 1, 1995 ~~[(1993)]~~ which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual 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 4. Implementation of the Payment System. The cabinet's reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system shall include ~~the following~~ specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet.

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;
2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or
3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by



facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed.

2. Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.

3. Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall ~~are~~ subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF-MRs, NF-institutions for mental disease (IMDs), and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area ~~(SMSA)~~.

b. The rural array shall include all facilities in nonstandard metropolitan statistical area (SMSA) counties.

c. For purposes of arraying, current multilevel facilities (i.e., ~~S~~NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. Hospital dual licensed beds shall be paid at the hospital based facility upper limits;

d. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be

equal to projected costs; and

e. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.

4. Other factors relating to costs and upper limit determination shall be:

a. ~~If~~ When the cabinet has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it



meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include ~~but shall not be limited to~~ notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist when an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the cabinet shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used

for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) No increase in valuation in relation to depreciation and interest costs shall be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a) (13)(C) and the Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 [0.7] effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year. ~~Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this administrative regulation or the "Kentucky Medicaid Program Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (9)(e) of this section) shall be determined in accordance with the methodology set forth in this administrative regulation for the revaluation of assets of nursing facilities.~~

~~(a) An increase shall not be allowed in capital costs;~~

~~(b) The allowable historical base for depreciation for the purchaser shall be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price; and~~

~~(c) The amount of interest expense allowable to the purchaser shall be limited to the amount that was allowable to the seller at the~~

time of the sale.)

(11) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Cabinet approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if ~~when~~:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet.

(a) The occupancy rate shall not be less than actual bed

occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, institutions for mental diseases (IMDs), pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive ~~[(CS)]~~.

(a) Facilities qualifying for the cost savings incentive [CS] (except for NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive [CS] shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive [CS] amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF-MRSs shall qualify for the cost savings incentive if ~~when~~ the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive [CS] shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive [CS] amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$ .87
97.00 -102.99	1.29	\$ .75
103.00 -108.99	1.18	\$ .62
109.00 -114.99	1.06	\$ .47
115.00 -120.99	.92	\$ .31
121.00 -126.99	.76	\$ .13
127.00 -133.49	*.53	---

\*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements)

under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases [IMDs], and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

(a) 1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight).

2. The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive [CSI] adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive [CSI] factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency.

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671, Conditions of Medicaid provider participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions. [the following:

~~(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement Operations, a reevaluation of the point at issue. This request shall be received within forty-five (45) days following notification of the prospective rate or forwarding of the desk review or audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.~~

~~(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing reimbursement review panel to be established by the commissioner.~~

~~(a) This request shall be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement Operations.~~

~~(b) The panel shall consist of three (3) members: one (1) member from the Division of Reimbursement Operations, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the Commissioner, Department for Medicaid Services, with the designated member to act as chairperson of the review panel.~~

~~(c) A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of the written request.~~

~~(d) The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.~~

~~(e) In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances in order to provide for equitable treatment and reimbursement of the provider.~~

~~(f) The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.]~~

Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1995 [15, 1994].

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: May 15, 1995

FILED WITH LRC: May 15, 1995 at 11 a.m.

### KENTUCKY HEALTH POLICY BOARD (As Amended)

#### 909 KAR 1:090. Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

RELATES TO: KRS 304.17A.130

STATUTORY AUTHORITY: KRS 304.17A.130

NECESSITY AND FUNCTION: KRS 304.17A-130 provides that the Kentucky Health Policy Board shall promulgate administrative regulations for the establishment of a risk adjustment process to be used in equalizing risk between insurers.

Section 1. Definitions. (1) "Age" means a person's attained age and when [ ] for the purpose of attributing age to a family unit, "age" is defined [determined] as the age attained by the policyholder.

(2) "Benefit plan" means any plan as defined by KRS 304.17A-100(4) which is subject to this administrative regulation.

(3) "Board" means, as defined by KRS 304.17A-130(5), the Kentucky Health Policy Board.

(4) "Continuation coverage" means continuation coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1987 or provided through the Kentucky Health Purchasing Alliance.

(5) "Demographic Risk Adjustment Fund" means the risk adjustment fund established under Section 7 of this administrative regulation, including amounts owed to the fund by insurers plus any interest accrued on the amounts paid by the insurers prior to the payout of amounts due from the fund in accordance with Section 7 of this administrative regulation.

(6) "Diagnosis" means any diagnosis listed in the high cost case in Tables 2 and 2A.

(7) "Eligible insurer" means an insurer eligible for a payment from the High Cost Case Fund as defined in Section 12 of this administrative regulation.

(8) "Family composition category" means one (1) of the four (4) categories of family types (single, couple, single parent family and dual parent families) distinguished in the modified community rating structure established pursuant to KRS 304.17A-120.

(9) "High Cost Case Fund" means the risk adjustment fund referred to under Section 10 of this administrative regulation, including the contributions required under Section 12 of this administrative regulation plus any interest accrued.

(10) "Insurer" means a person or entity as defined by KRS 304.17A-100(5) which issues or renews benefit plans for employers

with 100 employees or less, individuals, or members of the Kentucky Health Purchasing Alliance, affiliated groups, trusts, or associations consisting of 100 individuals or less or any number of employers with 100 employees or less.

(11) "MCRC" means modified community rating cell which is a premium rating cell classification based on:

- (a) Age;
- (b) Family composition category;
- (c) Geographic area;
- (d) Benefit plans;
- (e) Alliance status;
- (f) Group versus nongroup.

(12) "Member months of enrollment" means the number of policyholders enrolled in benefit plans subject to this administrative regulation multiplied by the number of months of such enrollment over the reporting periods defined in Section 7 of this administrative regulation for demographic risk adjustment and Section 11 of this administrative regulation for high cost case adjustment.

(13) "Months of exposure" means the date of diagnosis or the performance of a procedure listed in Tables 2 and 2A, as appropriate, through the end of the reporting period or episode of illness, whichever comes first except [ ] in the case of transplantation, the episode of illness shall be considered to begin with the provision of preoperative care and end with immediate postoperative follow up care.

(14) "Policyholder" means:

- (a) For individual policy health insurance of a commercial insurance company - the policyholder;
- (b) For a health maintenance organization - a subscriber;
- (c) For small group health insurance other than that provided by a health maintenance organization - the certificateholder.

(15) "PRAF" means prospective risk adjustment factor which are the factors in Table 1 associated with any of the demographic and coverage status categories or cells which include gender (by age), COBRA status and retiree status.

(16) "Procedure" means, as defined in KRS Chapter 216B, any procedures listed in the high cost case Tables 2 and 2A.

(17) "Retiree" means a former employee covered under a group insurance policy sponsored by the employer, excluding a former employee receiving continuation coverage. Retirement status shall be determined for an individual by the group sponsor.

(18) "Risk adjustment administrator" (administrator) means the contractor retained by the Kentucky Health Policy Board pursuant to Section 13 of this administrative regulation.

(19) "Risk assessment cell" means those classification bases referred to in Table 1.

Section 2. Applicability. (1) This administrative regulation applies to all benefit plans that are subject to KRS 304.17A-120(1) and to all insurers defined in this administrative regulation.

(2) The risk adjustment system established pursuant to this administrative regulation shall be applied on an insurer-by-insurer basis. Risks covered by all of the benefit plans offered by a single insurer shall be cumulated across those plans for the purpose of determining the insurer's relative risk and adjusting the insurer's premium income accordingly, irrespective of whether the enrollment is through the alliance or not.

Section 3. Demographic Risk Assessment. The first stage of the risk adjustment system is demographic risk assessment which represents the development stage of the system. In demographic risk assessment, the variation in health care costs among specified population groups is analyzed and weighted to adjust for these differences.

(1) To calculate an insurer's composite PRAF the insurer shall:

- (a) Determine the number of policyholders in each risk assessment cell (Table 1) for all health benefit plans.
- (b) Multiply the sum of policyholders for each risk assessment cell

determined in paragraph (a) of this subsection by the PRAF associated with each cell in Table 1, or in schedules of factors subsequently developed as provided for in Section 4(2) of this administrative regulation;

(c) Sum the products of paragraph (b) of this subsection for all cells and divide by the total number of policyholders to get the composite PRAF.

(2) Prior to October 1, 1996, each insurer shall calculate its composite PRAF using the factors indicated in Table 1 and the enrollment, by risk assessment cells, for the final month in each calendar quarter. Subsequent to September 30, 1996, insurers shall calculate their composite PRAFs using the most recent PRAF updates developed in accordance with Section 4(2) of this administrative regulation.

(3) Each insurer shall quarterly file with the administrator, by the 15th day of the final month of each calendar quarter;

(a) Its current composite PRAF;

(b) The total number of policyholders included in calculating the composite PRAF as specified in Section 7(2) of this administrative regulation; and

(c) Its member months of enrollment for that calendar quarter.

The administrator shall then calculate a statewide composite PRAF, weighted by the number of policyholders, to be used quarterly in calculating the quarterly adjustment amounts in Section 7(1) of this administrative regulation.

Section 4. Schedule of PRAFS and Updates. (1) PRAFs to be used prior to October 1, 1996 are displayed in Table 1.

(2) Starting September 1, 1996, the administrator shall generate a revised table of PRAFs annually for each family composition category based on information about the actual distribution of policyholders across risk adjustment cells and available data on the relative benefit costs of that population.

Section 5. Reference Premium. A reference premium shall be determined by the administrator quarterly to be used in calculating the quarterly adjustment amounts in Section 7(1) of this administrative regulation. Each insurer shall file quarterly with the administrator, by the 15th day of the final month of each calendar quarter, its total annualized premium for all policyholders enrolled in the month specified in Section 7(2) of this administrative regulation. The reference premium shall equal the statewide average annualized premium per policyholder.

Section 6. Insurer-specific Rated Risk Ratio. (1) Not later than March 1 and September 1 of each year, the administrator shall estimate the enrollment weighted average monthly premium of each MCRC cell.

(2) The administrator shall calculate the average rated risk factor for all insurers as a whole. This factor represents the average premium across all MCRC weighted by the enrollment in each cell. To calculate this factor, the administrator shall multiply the number of policyholders enrolled in each MCRC by the values calculated in subsection (1) of this section and divide the sum of the products by the total number of policyholders insured by all insurers.

(3) To calculate each insurer's specific rated risk factor, the administrator shall multiply the number of policyholders in each MCRC by the values calculated in subsection (1) of this section and divide the sum of those products by the total number of policyholders insured by the insurer.

(4) The Insurer-specific rated risk ratio to be used to calculate the quarterly adjustment amounts in Section 7(1) of this administrative regulation shall be determined by the Administrator according to the following formula:

Insurer-Specific Rated Risk Ratio = Insurer Specific Rated Risk Factor/Average Rated Risk Factor

The insurer-specific rated risk ratios based on the March 1 MCRC premium estimates each year shall be used to determine quarterly adjustment amounts in Section 7 of this administrative regulation for the March 20 and June 20 calculation dates that year. Ratios based on the September 1 MCRC cell premium estimates each year shall be used to determine quarterly adjustment amounts for September 20 and December 20 calculation dates that year.

Section 7. Demographic Risk Adjustment. (1) On a quarterly basis, the administrator shall calculate and inform each insurer of the amount owed to the demographic risk adjustment fund (-) or the amount due from the fund (+) for each insurer no later than ten (10) days following the dates specified in subsection (2) of this section by applying the following formula in which "i" represents a unique value for each insurer participating in the risk adjustment system:

Quarterly Adjustment Amount<sub>i</sub> = (Composite PRAF<sub>i</sub> - Statewide Average Composite PRAF) \* Reference Premium \* Rated Risk Ratio<sub>i</sub> \* Member Months of Enrollment<sub>i</sub> \* .0833

(2) The quarterly calculation dates are as follows:

First Quarter:	March 20
Second Quarter:	June 20
Third Quarter:	September 20
Fourth Quarter:	December 20

For quarterly calculation dates through June 20, 1996, composite PRAF and reference premium information shall be based on enrollment in the final month of the calendar quarter. Subsequently, composite PRAF and reference premium information shall be based on enrollment in the final month of the immediately preceding calendar quarter. The member months of enrollment shall always be based on enrollment with the insurer over the current calendar quarter.

(3) In the case of an insurer for which the adjustment amount is negative, the insurer shall ~~be obligated to~~ make the full payment to the administrator within twenty (20) days following the dates provided in subsection (2) of this section ~~and in a form and manner determined by the administrator, subject to~~ Section 8 of this administrative regulation. Insurers failing to make such payments will be subject to decertification by the Insurance department, or such intermediate sanctions as allowed by law. ~~[determined appropriate by the board.]~~

(4) In the case of an insurer for which the adjustment amount is positive, the insurer is entitled to receive a payment for that amount from the administrator subject to Section 8 of this administrative regulation. This amount shall be paid on a quarterly basis, subsequent to the collection of payments owed to the Demographic Risk Adjustment Fund pursuant to subsection (3) of this section.

Section 8. Fund Equalization. (1) In the event that the Demographic Risk Adjustment Fund is in deficit because the amount of money due insurers exceeds the amount of payments insurers owe, payments to insurers eligible for a payment from the fund shall be reduced proportionately.

(2) In the event that the Demographic Risk Adjustment Fund is in surplus because the amounts due insurers is less than the amount of money insurers owe, payments owed by insurers shall be reduced proportionately.

Section 9. Reporting Requirements. (1) Insurers shall collect such information from enrollees and group sponsors as may be necessary in order to classify risks in accordance with Section 3 of this administrative regulation including, but not limited to, the active/retiree status of each policyholder.

(2) Insurers shall provide the administrator with any information required by the administrator in a form and content determined by the

administrator, to:

- (a) Verify the calculation of composite PRAFs as described in Section 3 of this administrative regulation;
- (b) Calculate average weighted premiums as described in Section 5 of this administrative regulation;
- (c) Calculate rated risk factors as required under Section 6 of this administrative regulation;
- (d) Manage the Demographic Risk Adjustment Fund pursuant to Section 8 of this administrative regulation and this section; and
- (e) Perform other duties specified in Section 13 of this administrative regulation.

Section 10. High Cost Case Fund. Insurers shall be eligible for a payment from the High Cost Case Fund on the basis of the number of months of exposure during a year for enrollees having a diagnosis or receiving a procedure listed in Tables 2 and 2A. Payment shall be subject to additional conditions established in Section 12(10) of this administrative regulation.

Section 11. High Cost Reports. (1) Insurers shall file with the administrator detailed information about enrollees with procedures/diagnoses on the high cost case list. Initial information regarding a case shall be filed by an insurer as soon as it is available in order that the administrator may confirm its probable eligibility as a high cost case. The information to be included with the initial filing shall, at a minimum, contain the insurer National Association of Insurance Commissioners (NAIC) number (or, if no NAIC number has been assigned to the insurer, an insurer identification number assigned by the Department of Insurance), the names of the enrollee (patient) and policyholder, the effective date of the case, the procedure/diagnosis classification, and any medical records which would support confirmation of the cases's eligibility (such as, physician's attestation, operative reports for transplants, respiratory therapy records for ventilator dependence, delivery room records and Neonatal Intensive Care Unit (NICU) progress notes for neonate). The administrator, after initial review for determination as to possible eligibility as a high cost case, shall assign a claim number to the case for future reference. Subsequently, the insurer shall file with the administrator for each of these [each] cases, not less frequently than each calendar quarter, detail information relative to the case including, at a minimum, the claim number, patient name, effective date of the case, termination date of the case (if terminated), an abstract of the patient's medical records, case management records, utilization records, itemized bills, dates of service, and proof of payments.

(2) Not later than March 1, 1996, insurers shall file 1995 high cost case annual summary reports with the administrator. Such reports shall, for each procedure/diagnosis on the high cost case list, indicate the claim number, patient name, effective date of the case, termination date of the case (if terminated), the number of months of exposure during 1995, and the total payments made by the insurer during 1995 for health care services on the case. Months of exposure and payments are to be totaled for each procedure/diagnosis. An insurer certification in accordance with Section 12(10) of this administrative regulation shall be filed with each annual report.

(3) For years subsequent to 1995, insurers shall file the annual summary reports described in [sub] Section 12(2) of this administrative regulation [section] for high cost cases treated during the period of January 1 through December 31 each year. Such reports shall be due not later than March 1 immediately following the end of the calendar year for which the information is being reported.

(4) Health maintenance organizations shall impute costs based on a standard accounting methodology established by the administrator if such plans are unable to identify the cost of services for individuals with high cost case in a manner otherwise consistent with the requirements of this section.

Section 12. Payment Adjustment for High Cost Cases. (1) All

insurers shall remit to the administrator on a quarterly basis an amount equal to one (1.00) percent of the total premium received during a calendar quarter for benefit plan subject to this administrative regulation. This payment ~~shall~~ must be received by the administrator not later than the 15th day of the month immediately following the end of the calendar quarter.

(2) Payments to insurers from the High Cost Case Fund shall be based on the amount that each insurer's per enrollee payments for high cost cases, adjusted for statewide average payments per month of exposure, exceeds the statewide average per enrollee payments for high cost cases, subject to subsection (9) of this section.

(3) Based on the high cost case information reported by insurers for the reporting period, the administrator shall compute the statewide average payment per month of exposure for each procedure/diagnosis described in Tables 2 and 2A. This set of calculations will determine the value for each procedure/diagnosis category that shall be used to calculate the statewide average high cost case score described in subsection (4) of this section and each insurer-specific high cost case score described in subsection (5) of this section.

(4) The administrator shall calculate a "statewide average high cost case score" as follows:

(a) Multiply the statewide average payment per month of exposure derived in subsection (3) of this section for each procedure/diagnosis on the high cost case list by the total number of months of exposure reported for each respective procedure/diagnosis over the reporting period by all insurers;

(b) Divide the sum of the products generated in paragraph (a) of this subsection by the total number of member months of enrollment over the reporting period in all benefit plans subject to this administrative regulation.

(5) The administrator shall calculate an "insurer-specific high cost case score" for each insurer as follows:

(a) Multiply the statewide average cost per month of exposure derived in subsection (3) of this section for each procedure/diagnosis on the high cost case list by the number of months of exposure reported for each respective procedure/diagnosis by the insurer over the reporting period;

(b) Divide the sum of the products in paragraph (a) of this subsection by the number of member months of enrollment over the reporting period in all benefit plans in effect with the insurer. Each of these calculations is expressed below, where " $p$ :" represents medical procedure/diagnosis specific values and " $i$ :" represents insurer-specific values:

Average Payment Per Month of Exposure<sub>p</sub> = Total High Cost Case Payments / Months of Exposure<sub>p</sub>

Statewide Average High Cost Case Score =  $\sum_p$  (Average Payment Per Month of Exposure<sub>p</sub> \* Months of Exposure<sub>p</sub>) / Total Member Months of Enrollment

Insurer-Specific High Cost Case Score<sub>i</sub> =  $\sum_p$  (Average Payment Per Month of Exposure<sub>p</sub> \* Months of Exposure<sub>p</sub>) / Member Months of Enrollment

(6) Insurers with high cost case scores in excess of the statewide average high cost case score shall be eligible for payment from the High Cost Case Fund, and shall be deemed "eligible insurers" for the purposes of this section.

(7) Each eligible insurer shall receive a payment from the High Cost Case Fund equal to the unadjusted payment amount described in subsection (8) of this section multiplied by the fund equalization factor described in subsection (9) of this section. Such amounts shall be calculated by the administrator and remitted to eligible insurers not later than May 1 of each year.

(8) The unadjusted payment amount for each eligible insurer is equal to the product of:

(a) The insurer-specific high cost case score described in subsection (5) of this section minus the statewide average high cost



# ADMINISTRATIVE REGISTER - 758

case score described in subsection (4) of this section;

(b) The insurer's total member months of enrollment over the reporting period; and

(c) .75;

(9) The fund equalization factor is equal to the lesser of "1" and the result of:

(a) The total amount of payments remitted to the High Cost Fund by insurers over the reporting period divided by;

(b) The sum of unadjusted payment amounts for the reporting period for all insurers.

The equations that will be used by the administrator to make the calculations described in this section are provided below, where "Σ" designates eligible insurer-specific values:

Amount of Payment<sub>i</sub> = Unadjusted Payment Amount<sub>i</sub> \* Pool Equalization Factor

Unadjusted Payment Amount<sub>i</sub> = (High Cost Case Score<sub>i</sub> - Statewide Average High Cost Case Score) \* Member Months of Enrollment<sub>i</sub> \* .75

Fund Equalization Factor = (High Cost Case Fund Contributions + Fund Interest)/Σ<sub>i</sub> Unadjusted Payment Amounts

(10) In order to receive a payment, an insurer must certify that:

(a) All services for procedures/diagnoses reported under this section are services that are covered by the insurer in accordance with the coverage requirements of standardized benefit plans established by the board pursuant to KRS 304.17A-160;

(b) The patients for whom payment is being sought:

1. Are enrolled in an applicable benefits plans during the applicable reporting period;

2. Have received a primary diagnosis and/or procedure on the high cost case list, as reported by the insurer;

3. Are not covered by another insurer or third-party payor for the course of treatment related to the reported medical procedure/diagnosis for the episodes of illness periods reported.

(11) In the event that the High Cost Case Fund is in surplus because the fund equalization factor is determined to be "1" in accordance with subsection (9) of this section, the surplus shall be rebated to insurers proportionate to the amount of their contributions, and the board shall approve appropriate reductions in the contribution rate for subsequent quarters.

(12) The administrator shall notify each insurer of its estimated payment amount by May 1 of each year.

(13) In the event that the administrator disqualifies a high cost case claim, the insurer may appeal to the board.

Section 13. Administrator. (1) The board will contract with an administrator to manage the day-to-day operations of the risk adjustment system in accordance with this administrative regulation and policies established by the board. All insurer subject to this administrative regulation, and any parent company or subsidiary of any insurer, shall be disqualified from being selected as the administrator.

(2) The duties of the administrator shall include the following:

(a) Performing and publishing all calculations required under this administrative regulation except for calculations to be performed by insurers in accordance with the appropriate sections;

(b) Collecting data from insurers and other parties necessary to administer the risk adjustment system;

(c) Collecting payments from insurers for the Demographic Risk Adjustment Fund and the High Cost Case Fund and making risk adjustment payments to insurers eligible for such payments;

(d) Auditing insurers' submissions of high cost claim reports.

(e) Reporting to the board information regarding trends in enrollment and experience overall, in addition to experience regarding the Demographic Risk Adjustment Fund and the High Cost Case Fund, on a periodic basis, but not less frequently than annually. The first report is due by August 1, 1996.

(f) Other duties delegated to the Administrator under this administrative regulation or by the board subsequent to the issuance of this administrative regulation.

(3) The cost of administering the risk adjustment system, exclusive of the cost of making risk adjustment payments, shall be financed through a surcharge imposed on each benefit plan subject to this administrative regulation. The amount of the surcharge shall be ten (10) cents per policy holder per month in 1996 and adjusted annually provided for in KRS 304.17A-130. ~~[determined by the board annually.]~~

~~[Section 14. Regulatory Authority for Issuance of Interpretative Guidance. The board shall retain the authority to issue guidance in the interpretation of this administrative regulation.]~~

TABLE 1

DEMOGRAPHIC RISK ASSESSMENT CELL FACTOR MATRIX

Attained Age	<u>SINGLE COVERAGE</u>		<u>POLICYHOLDER AND SPOUSE COVERAGE</u>		<u>SINGLE PARENT FAMILY COVERAGE</u>		<u>TWO PARENT FAMILY COVERAGE</u>		Attained Age
	<u>Active Policyholders</u>		<u>Active Policyholders</u>		<u>Active Policyholders</u>		<u>Active Policyholders</u>		
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	
<30	0.549	1.449	1.029	0.961	0.658	1.164	1.020	0.964	<30
30-39	0.629	1.374	1.024	0.967	0.715	1.154	1.023	0.949	30-39
40-49	0.702	1.211	1.017	0.978	0.828	1.108	1.023	0.941	40-49
50-54	0.862	1.084	1.002	0.994	0.933	1.048	1.008	0.963	50-54
55-59	0.927	1.042	1.001	0.998	0.961	1.029	1.005	0.974	55-59
60-64	1.084	0.952	1.000	0.999	1.072	0.941	1.000	0.998	60-64
65+	1.078	0.957	1.000	0.999	1.018	0.892	0.990	1.061	65+
Under 30	<u>COBRA Policyholders</u>		<u>COBRA Policyholders</u>		<u>COBRA Policyholders</u>		<u>COBRA Policyholders</u>		Under 30
	<u>COBRA Policyholders</u>		<u>COBRA Policyholders</u>		<u>COBRA Policyholders</u>		<u>COBRA Policyholders</u>		
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	
Under 30	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	Under 30
30-39	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	30-39
40-49	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	40-49
50-54	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	50-54
55-59	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	55-59
60-64	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	60-64
65+	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	65+



# ADMINISTRATIVE REGISTER - 759

	Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders		
Under 50	1.247	1.247	1.077	1.074	1.168	1.142	1.058	1.048	Under 50
50-54	0.991	1.247	1.077	1.069	1.017	1.142	1.058	1.011	50-54
55-59	1.066	1.198	1.076	1.073	1.047	1.122	1.055	1.023	55-59
60-64	1.247	1.095	1.075	1.074	1.168	1.026	1.050	1.048	60-64

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Modified 8/9/95

TABLE 1

## DEMOGRAPHIC RISK ASSESSMENT CELL FACTOR MATRIX

SINGLE COVERAGE			POLICYHOLDER AND SPOUSE COVERAGE		SINGLE PARENT FAMILY COVERAGE		TWO PARENT FAMILY COVERAGE		
Active Policyholders			Active Policyholders		Active Policyholders		Active Policyholders		
Attained Age	Male	Female	Male	Female	Male	Female	Male	Female	Attained Age
0-1	1.202	1.202							0-1
2-17	0.267	0.267	1.020	0.061	0.658	1.164	1.020	0.064	2-17
18-29	0.540	1.440	1.020	0.061	0.658	1.164	1.020	0.064	18-29
30-39	0.620	1.274	1.024	0.067	0.715	1.164	1.023	0.049	30-39
40-44	0.682	1.238	1.022	0.071	0.808	1.005	1.028	0.034	40-44
45-49	0.726	1.170	1.010	0.087	0.853	1.124	1.017	0.040	45-49
50-54	0.862	1.084	1.002	0.094	0.932	1.048	1.008	0.062	50-54
55-59	0.927	1.042	1.001	0.098	0.961	1.020	1.005	0.074	55-59
60-64	1.084	0.952	1.000	0.090	1.072	0.941	1.000	0.098	60-64
65+	1.078	0.957	1.000	0.090	1.018	0.892	0.990	1.061	65+
COBRA Policyholders			COBRA Policyholders		COBRA Policyholders		COBRA Policyholders		
Under 20	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	Under 20
20-29	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	20-29
40-44	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	40-44
45-49	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	45-49
50-54	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	50-54
55-59	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	55-59
60-64	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	60-64
65+	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	65+
Early Retiree Policyholders			Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders		
Under 50	1.247	1.247	1.077	1.074	1.168	1.142	1.058	1.048	Under 50
50-54	0.991	1.247	1.077	1.060	1.017	1.142	1.058	1.011	50-54
55-59	1.066	1.198	1.076	1.073	1.047	1.122	1.055	1.023	55-59
60-64	1.247	1.095	1.075	1.074	1.168	1.026	1.050	1.048	60-64

TABLE 2: HIGH COST CASE LIST

Procedure/Diagnosis	Payment Conditions and Limitations
Liver transplantation	Payment limited to the cost of pre-operative care, transplantation and immediate follow-up care
Heart transplantation	
Bone marrow transplantation	
Kidney transplantation	
End Stage Renal Disease with dialysis	

# ADMINISTRATIVE REGISTER - 760

Ventilator support for at least 30 days	
Neonates with a birth weight of less than 1,500 grams or respiratory distress syndrome requiring at least 30 days of ICU care	
HIV/AIDS	With specified opportunistic infections and diseases designated in Table 2A
Leukemia	

\* The administrator will identify code numbers annually

TABLE 2A: SPECIFIC OPPORTUNISTIC INFECTIONS  
AND OTHER DISEASES FOR HIV/AIDS

HIV/AIDS with the following specified conditions:

Candidiasis of lung; coccidiosis; cryptosporidiosis; isosporiasis; pneumocystosis; progressive multifocal leukoencephalopathy; toxoplasmosis; malignant neoplasms including only: Karposi's sarcoma, lymphosarcoma and reticulosarcoma, primary lymphoma of the brain.

The following specified conditions when due to HIV/AIDS:

Specified infections including only: candidiasis: disseminated, of the mouth, of the skin and nails, other and unspecified sites; coccidioidomycosis; cytomegalic inclusion disease; acute or subacute endocarditis; herpes simplex; herpes zoster; histoplasmosis; microsporidiosis; mycobacteriosis, other and unspecified; acute or subacute myocarditis; Nocardia infection; opportunistic mycoses; pneumonia: NOS, other bacterial pneumonia, pneumococcal, viral NES and NOS; Salmonella infections; septicemia; strongyloidiasis; tuberculosis;

Specified diseases of the central nervous system including only: demyelinating disease NOS, disorders NOS, other and unspecified nonarthropod-borne viral disease, other and unspecified slow virus infections, dementia NOS, organic dementia, presenile dementia, encephalitis, encephalopathy, myelopathy, nonpsychotic or psychotic organic brain syndrome NOS;

Other specified conditions including only: abnormal weight loss; abnormality, respiratory; agranulocytosis, anemia: NOS, aplastic, other and unspecified, deficiency, hemolytic, acquired; arthritis, pyogenic, infective; blindness or low vision; blood and blood-forming organs, unspecified disease; cachexia; dermatomycosis, dermatophytosis; diarrhea (noninfectious), infectious; disease or disorder NOS: blood and blood-forming organs, salivary gland, skin and subcutaneous tissue; fever; gastroenteritis (infectious); hepatomegaly; hyperhidrosis; hypersplenism; infection: intestinal, ill-defined; lack of expected physiological development in infant; leukoplakia of oral mucosa (tongue); malabsorption, intestinal; malaise; nephritis & nephropathy; neuralgia NOS; neuritis NOS; pneumonitis, lymphoid, interstitial; polyneuropathy pyrexia; radiculitis NOS; retinal vascular changes; retinopathy, background; secondary cardiomyopathy; splenomegaly; thrombocytopenia, secondary and unspecified.

HIV/AIDS with other conditions which evidence severe immune system compromise subject to case-by-case review and approval.

JACK B. HALL, Chairman

APPROVED BY AGENCY: August 10, 1995

FILED WITH LRC: August 10, 1995 at noon

# ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

## KENTUCKY REVENUE CABINET Office of General Counsel Division of Tax Policy and Research (Amended After Hearing)

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

RELATES TO: KRS 141.120, 141.200

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4), 141.120 (as interpreted by the Kentucky Supreme Court in the cases styled: *Dept. of Revenue v. Early & Daniel Co., Inc.*, Ky. 628 S.W.2d 630 (1982), *Armco, Inc. v. Revenue Cabinet*, Ky., 748 S.W.2d 372 (1988), and *GTE & Subsidiaries v. Revenue Cabinet, Commonwealth of Kentucky*, Ky., 889 S.W.2d 788 (1994) [94 SC 168 DG (Dec. 22, 1994)]

NECESSITY AND FUNCTION: This administrative regulation is necessary to clarify the methods available for calculating Kentucky taxable net income in light of the Kentucky Supreme Court's interpretations of the KRS Chapter 141, particularly KRS 141.120 and 141.200. It also serves to establish ~~consistent~~ guidelines for the consistent filing of corporation income tax returns by [of] corporations comprising unitary business groups. The lack of authoritative guidelines has been a significant problem for taxpayers and the cabinet for more than twenty (20) years. This administrative regulation sets forth the combined reporting [unitary] method for [of] reporting the business income of corporations comprising a unitary business group and the principles that determine the scope of a unitary business group for the filing of a combined [unitary] income tax report. While the *GTE* decision upheld the right of a group of unitary corporations to compute business income on a combined [unitary] basis, the power of the cabinet to compute business income on a combined [unitary] basis had previously been upheld by the Kentucky Supreme Court in its *Early & Daniel* and *Armco* decisions. (These decisions specifically construed KRS 141.120.) Furthermore, the Kentucky Supreme Court held in *GTE* that a unitary business group such as *GTE* and subsidiaries could not compute its business income without using the combined [unitary] reporting method. Finally, the Kentucky Supreme Court's decision in *GTE* was based on the fact that *GTE* did not seek authority to change its reporting methods from year to year.

Section 1. Definitions. For purposes of this administrative regulation:

(1)(a) "Centralized management" exists when:

1. One (1) or more directors, officers, or other management employees or persons participate in the management decisions which affect the respective corporations in a related group; or

2. A centralized unit(s) performs, for some or all of the corporations, functions which independent corporations would perform for themselves.

(b) A finding of centralized management cannot be supported merely by showing that the requisite ownership percentage exists or that there is some incidental economic benefit accruing to a related group because common ownership improves the financial position of the related group.

(c) Centralized management is present even though management authority resides in a person that is not a member of the related group provided that such authority is actually exercised by such person.

(d) Factors which characterize centralized management.

1. Centralized management is present when management

acts to ensure that the corporations in a related group are operated for the benefit of more than one (1) member of the related group and not just the individual interests of any single corporation as shown by standards of professionalism; profitability; ethical practices that apply to the corporations; common employee training programs; or the transfer or rotation of officers or other management employees among the corporations in a related group.

2. Centralized management is present when authority over matters such as purchasing, product line, marketing, accounting, tax compliance, payroll, personnel and employee benefits, financing, or capital investment is not left to each member of the related group.

(2) "Combined income tax report" means a single Kentucky corporation income tax report of a unitary business group the purpose of which is to determine the following:

(a) Unitary business income or loss;

(b) Income apportionment fraction;

(c) Unitary business income or loss apportioned and nonbusiness income or loss allocated to Kentucky;

(d) Entity assignment fraction; and

(e) Unitary business income or loss attributable to Kentucky unitary corporations.

(3) "Combined reporting method" means a method of reporting the business income or loss of a unitary business group whereby all items of business income and all items claimed as business expense are aggregated to determine net business income or loss of the unitary business group. The aggregate business income is apportioned by means of an apportionment formula to determine the amount of business income or loss attributable to the activities of the unitary business group in Kentucky. Nonbusiness income or loss is accounted for separately.

(4) "Common parent" means a corporation that [who] directly or indirectly owns more than fifty (50) percent of the total voting power of the stock of one (1) or more corporations and no [other corporation owns] more than fifty (50) percent of the total voting power of the stock of which is owned directly or indirectly by any other [that] corporation.

(5) [(2)] "Corporation" includes:

(a) Any partnership electing to be treated as a corporation for federal income tax purposes; and

(b) Any limited liability company treated as a corporation for federal income tax purposes.

(6) [(3)] "Domestic international sales corporation" or "DISC" means a domestic corporation making an election under 26 USC 992.

(7)(a) "Economies of scale" exist when a common undertaking between any two (2) or more corporations in a related group results in an actual decrease, or the potential for an actual decrease, in the cost of operational or administrative functions due to the increase in operational size.

(b) Factors which characterize economies of scale. Economies of scale are present when the related group receives a cost savings benefit from centralized performance of traditional corporate administrative functions such as purchasing; legal services; accounting; tax administration; pension or benefit administration; or financial reporting, compared to the cost of each corporation performing or obtaining these services individually.

(8) [(4)] "Employment of any other method" shall not include the combined [unitary method of] reporting method the business income of a unitary business group.

(9) ~~[(5)]~~ "Entity assignment fraction" means the ratio used to assign to each Kentucky unitary corporation the combined ~~[unitary]~~ business income or loss of a unitary business group as apportioned to Kentucky ~~[to a Kentucky unitary corporation]~~.

(10) ~~[(6)]~~ "Exclusion of any one (1) or more of the factors" means that the three (3) factor formula of property, payroll, and sales as prescribed by KRS 141.120(8) may be changed to a two (2) factor formula by eliminating one (1) of the three (3) factors (property, payroll, or sales) or a one (1) factor formula by eliminating two (2) of the three (3) factors (property, payroll, or sales).

(11) ~~[(7)]~~ "Foreign sales corporation" or "FSC" means a corporation as defined in 26 USC 922.

(12)(a) "Functional integration" exists when there are transfers between or pooling among any two (2) or more corporations in a related group with respect to items such as products or services, technical information, marketing information, distribution systems, purchasing, engineering, or intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, or processes that affect the business operations of those corporations.

(b) Factors which characterize functional integration include factors such as intercompany sales, exchanges, or transfers; common marketing; transfer or pooling of technical information or intellectual property; common distribution system; common purchasing; or common or intercompany financing.

(13) ~~[(8)]~~ "Inclusion of one (1) or more additional factors" means that the three (3) factor formula of property, payroll, and sales prescribed by KRS 141.120(8) may be changed by adding one (1) or more additional factors.

(14) ~~[(9)]~~ "Income apportionment fraction" means the ratio used to apportion the combined ~~[unitary]~~ business income or loss to Kentucky.

(15) ~~[(10)]~~ "Intercompany" means between two (2) or more corporations in the same unitary business group.

(16) ~~[(11)]~~(a) "Kentucky corporation" means any corporation:

1. Organized under the laws of Kentucky;
2. Having its commercial domicile in Kentucky;
3. Owning or leasing property in Kentucky; or
4. Having one (1) or more individuals receiving compensation in Kentucky as defined in KRS 141.120(8)(b).

(b) The property or activity described in subparagraphs 3 and 4 of paragraph (a) shall not include any property or activity protected by 15 USC 381 ("PL 86-272").

(17) ~~[(12)]~~ "Kentucky unitary corporation" means a Kentucky corporation that is a member of ~~[in]~~ a unitary business group.

(18) ~~[(13)]~~ "Net operating loss" as used in 26 USC 172 for Kentucky income tax purposes means the Kentucky taxable net loss as computed under ~~[in]~~ Section 9 of this administrative regulation.

(19) ~~[(14)]~~ "Part-year member" means a corporation that ~~[which]~~ either becomes a member or ceases to be a member of the unitary business group after the beginning of a taxable year.

(20) ~~[(15)]~~ "Principal Kentucky corporation" means the Kentucky unitary corporation responsible for all income tax filings, maintenance of records, and audits of the unitary business group of which it is a member.

(21) ~~[(16)]~~(a) "Related group" means:

1. A common parent and all corporations in which it directly or indirectly owns more than fifty (50) percent of the total voting power of the stock of the corporation or corporations; or
2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts directly or indirectly own more than fifty (50) percent of the total voting power of the stock of each corporation.

(b) For purposes of paragraph (a) of this subsection, the constructive ownership rules of 26 USC 1563(e) shall apply.

(22) ~~[(17)]~~ "Separate accounting" means to specifically account for the income, expenses, and net income from each separate

location of a corporation's business activity.

(23) ~~[(18)]~~ "Separate entity reporting" means a method of income tax reporting that ~~[which]~~ treats each corporate entity discretely for the purpose of determining the business income or loss and ~~[as well as]~~ the nonbusiness income or loss of a single corporation.

(24) ~~[(19)]~~ "Separate income tax return" means a single Kentucky corporation income tax return by which a Kentucky corporation reports its ~~[the]~~ taxable net income or loss and remits the corporation income tax due for the corporation.

(25) ~~[(20)]~~ "Taxable income" means:

(a) As used in 26 USC 170 for Kentucky income tax purposes, the combined ~~[unitary]~~ business income or loss subject to apportionment as computed in accordance with Section 4 of this administrative regulation before the adjustment for nonbusiness income or loss provided in Section 4(4) of this administrative regulation.

(b) As used in 26 USC 172 for Kentucky income tax purposes, the Kentucky taxable net income or loss before the Kentucky net operating loss deduction as computed in Section 9 of this administrative regulation.

(26) ~~[(21)]~~ "Unitary business group" means two (2) or more corporations which are in the same related group whose business activities are interdependent as demonstrated by:

(a) Centralized management; ~~[and]~~

(b) ~~[(1)]~~ Functional integration; or

(c) ~~[(2)]~~ Economies of scale.

~~[(22)] "Unitary income tax report" means a single Kentucky corporation income tax report of the unitary business group the purpose of which is to determine the following:~~

~~(a) Unitary business income or loss;~~

~~(b) Income apportionment fraction;~~

~~(c) Unitary business income or loss apportioned and nonbusiness income or loss allocated to Kentucky;~~

~~(d) Entity assignment fraction; and~~

~~(e) Unitary business income or loss attributable to Kentucky unitary corporations.~~

~~[(23)] "Unitary method of reporting" means a method of reporting the business income or loss of a unitary business group whereby all items of business income and all items claimed as business expense are aggregated to determine net business income or loss of the unitary business group. The aggregate business income is apportioned by means of an apportionment formula to determine the amount of business income or loss attributable to Kentucky. Nonbusiness income or loss is accounted for separately.]~~

(27) ~~[(24)]~~ "936 corporation" means a corporation making an election under 26 USC 936.

Section 2. Reporting Requirements. (1) Every unitary business group including at least one (1) corporation which is a Kentucky corporation and at least one (1) corporation which has property or payroll without Kentucky shall compute and report its Kentucky business income or loss using the combined ~~[unitary]~~ reporting method.

(2) Every Kentucky corporation that ~~[which]~~ is not part of a unitary business group shall compute and report its Kentucky business income or loss using separate entity reporting.

Section 3. Composition of ~~a~~ ~~[the]~~ Unitary Business Group. (1) General rule. A unitary business group shall include:

(a) Any Kentucky corporation;

(b) Any corporation that is not a Kentucky corporation;

(c) Any holding company;

(d) Any domestic international sales corporation;

(e) Any foreign sales corporation; and

(f) Any 936 corporation;

provided that corporation is part of the unitary business group.

(2) Exceptions. ~~[Specific prohibitions.]~~ A unitary business group shall not include:

(a) Any partnership whether publicly-traded or not publicly-traded (including a joint venture or a limited liability company classified as a partnership for federal income tax purposes), trust, estate, or individual;

(b) Any corporation specifically exempted from the provisions of KRS 141.040;

(c) Any corporation (including a limited liability company) electing the provisions of 26 USC 1361-1379 ("S corporations"); or

(d) Any corporation organized under the laws of any foreign country or political subdivision thereof except as provided in subsection (1)(e) of this section.

(3) For purposes of this section, notwithstanding any other provision of this administrative regulation or any Kentucky Revised Statute, "person" where used in 15 USC 381 ("PL 86-272") to refer to a corporation means a unitary business group.

(4) Presumption.

(a) All corporations that are members of a [Any] related group are [re] presumed to be a single unitary business group.

(b)1. The presumption prescribed by [in] paragraph (a) of this subsection may be rebutted by any corporation in the related group or the cabinet.

2. Any corporation in the related group or the cabinet rebutting the presumption shall present clear and convincing evidence that centralized management, ~~or that both~~ functional integration, and economies of scale do not exist within the related [unitary business] group.

3. Each and every member of a related group does not have to be connected to each and every other member of the related group by centralized management, functional integration, or economies of scale to be a unitary business group so long as each and every member of the related group is connected to at least one (1) other member of the related group by centralized management, functional integration, or economies of scale. [That centralized management or that both functional integration and economies of scale do not exist between each and every corporation in a related group shall not establish that the corporations in the related group are not within the same unitary business group.]

Section 4. Computation of Combined [Unitary] Business Income or Loss Subject to Apportionment. The combined [unitary] business income or loss subject to apportionment under KRS 141.120 shall be computed as follows:

(1) Each corporation in a unitary business group shall determine its items of income and the items claimed as deductions in accordance with the provisions of KRS Chapter 141;

(2) The separate items of income, the separate items claimed as deductions, and any intercompany transactions (eliminated in accordance with Section 7 of this administrative regulation) of every corporation in the unitary business group shall be aggregated to arrive at the combined items of income and the combined items claimed as deductions;

(3) The total combined items claimed as deductions of the unitary business group shall be subtracted from the total combined items of income of the unitary business group; and

(4) Any nonbusiness net income shall be deducted and any nonbusiness net loss shall be added back.

Section 5. Charitable Contribution Deduction. (1) General rule. Every unitary business group shall apply the provisions of 26 USC 170 for Kentucky income tax purposes to the aggregate [for any] charitable contributions made by [any corporation in] the unitary business group.

(2) Carry-forward of excess contributions. [Carry-over of excess contributions.]

(a) Any excess contribution allowed by 26 USC 170(d) shall be assigned to each corporation in the unitary business group making a contribution by a fraction:

1. The numerator of which is the separate contribution of the corporation; and

2. The denominator of which is the total contributions of the unitary business group.

(b) Any excess contribution assigned to a corporation in the unitary business group shall be a contribution carry-forward of the corporation to whom the excess contribution was assigned.

Section 6. Capital Loss Deduction. (1) The provisions of 26 USC 1211-1212 shall apply for Kentucky income tax purposes to any capital loss of a [the] unitary business group.

(2) The excess of all capital losses of a [the] unitary business group over all capital gains of the unitary business group shall be assigned to each corporation in the unitary business group generating a net capital loss by a fraction,

(a) The numerator of which is the separate net capital loss before intercompany eliminations of every corporation in the unitary business group having a net capital loss; and

(b) The denominator of which is the total net capital losses before intercompany eliminations of the unitary business group.

(3) Any excess capital loss assigned to a corporation in the unitary business group shall be a capital loss carry-back or carry-forward of the corporation to which the capital loss is assigned.

Section 7. Elimination of Intercompany Transactions. (1) Any receipt or expense, any income or loss, and any gain or loss arising from any intercompany transaction shall be eliminated in accordance with the provisions of this section.

(2) Inventories.

(a) Any intercompany profit or loss shall be eliminated from the beginning and ending inventories in computing the cost of goods sold for the unitary business group.

(b) Any elimination of intercompany profit or loss required by paragraph (a) of this subsection shall be made for purposes of the property factor.

(3) Fixed assets and capitalized items.

(a) Any gain or loss on an intercompany sale of business fixed assets or any capitalized intercompany charge or expenditure shall be deferred until:

1. Either the seller or purchaser ceases to be in the unitary business group; or

2. The unitary business group for any reason ceases to use the combined reporting [unitary] method [of reporting].

(b)1. Any gain or loss that was deferred under paragraph (a) of this subsection shall be reported by the selling corporation as sold on the day immediately preceding the day [date] either corporation ceases to be in the combined [unitary] business group or the unitary business group ceases to use the unitary reporting method.

2. If an asset is sold to a person that is not in the unitary business group, any gain or loss that was deferred under paragraph (a) of this subsection shall be reported by the unitary business group in the year of the sale to the person that is not in the unitary business group.

(c) When any gain or loss is deferred under paragraph (a) of this subsection, the basis of the asset for property factor purposes shall be the seller's cost.

(d)1. The provisions of paragraph (a) of this subsection shall not apply when an affiliated group that [which] files a consolidated federal income tax return elects not to defer gain or loss on intercompany transactions [transfers] in which case the federal election shall [will] be binding [recognized] for Kentucky income tax purposes.

2. A copy of the federal election shall be attached to the combined [unitary] income tax report.

(4) Rent.

(a) Any intercompany rental income or expense shall be eliminated from items of income and items claimed as deductions of the unitary business group.

~~cabinet as one (1) group.]~~

Section 13. Preparation of the **Combined [unitary] Income Tax Report.** (1) The **combined [unitary]** income tax report shall include ~~[and be compiled for filing in the following order]:~~

(a) A **combined [unitary]** profit and loss statement in columnar form showing the items of income, items claimed as deductions, and intercompany eliminations for each corporation included in the unitary business group including any schedule or form detailing any separate item of business income or any separate item claimed as a business deduction (which statement shall follow the designation of items of income and expense used for Kentucky income tax purposes);

(b) A schedule reconciling Kentucky items of income and items claimed as deductions to federal items of income and items claimed as deductions;

(c) A **[unitary]** beginning and ending balance sheet in columnar form for each corporation included in the unitary business group;

(d) ~~[(e)]~~ A **combined [unitary]** property factor in columnar form showing for each corporation the composition of the numerator and denominator with a line showing the amounts of intercompany eliminations for both the numerator and denominator prepared in accordance with Section 8 of this administrative regulation;

(e) ~~[(d)]~~ A **combined [unitary]** payroll factor in columnar form showing for each corporation the composition of the numerator and denominator with a line showing the amounts of intercompany eliminations for both the numerator and denominator prepared in accordance with Section 8 of this administrative regulation;

(f) ~~[(e)]~~ A **combined [unitary]** sales factor in columnar form showing for each corporation the composition of the numerator and denominator with a line showing the amounts of intercompany eliminations for both the numerator and denominator prepared in accordance with Section 8 of this administrative regulation;

(g) A computation of combined business income or loss subject to apportionment as prescribed in Section 4 of this administrative regulation;

(h) A computation of the entity assignment fraction for each Kentucky unitary corporation as prescribed in Section 9 of this administrative regulation;

(i) A computation of Kentucky taxable net income or loss before the Kentucky net operating loss deduction of every Kentucky unitary corporation as prescribed in Section 9 of this administrative regulation;

(j) A computation of Kentucky net operating loss deduction as prescribed in Section 10 of this administrative regulation;

(k) A computation of the tax liability after the application of nonrefundable credits of every Kentucky unitary corporation and then aggregated to reflect the tax underpayment or overpayment of the unitary business group and the total estimated corporation income tax payments and any additional payments required under KRS Chapter 141 made by the unitary business group as prescribed in Section 11 of this administrative regulation;

(l) A schedule of any contribution carry-forward, any capital loss carry-back or carry-forward, any net operating loss carry-back or carry-forward, and any nonrefundable tax credit carry-forward of every Kentucky unitary corporation;

~~[(f)] A payments reconciliation schedule listing the names and Kentucky corporation income tax account numbers of the payor/assignor and assignee corporations, if any, any carry-over of prior year payments, any current year payments, and any assignment of any excess payments;~~

(m) ~~[(g)]~~ A stock ownership schedule reflecting for each corporation in the related group the name, address, federal **employer** identification number, Kentucky corporation income tax account number (if applicable), name of corporation or other owner owning directly or indirectly more than fifty (50) percent of the corporation's stock, percentage of stock owned, date stock was acquired, and indicate whether or not the corporation is included in the **combined**

**[unitary]** income tax report;

~~(n) [(h)] If any corporation is added to or any corporation is no longer included in the unitary business group, A separate schedule identifying the name, address, federal **employer** identification number, Kentucky corporation income tax account number (if applicable) of **any [the]** corporation added to or **any [of the]** corporation no longer included in the unitary business group, and the information that reasonably substantiates the inclusion or **exclusion [non-inclusion]** of the corporation that is added to or the corporation that is no longer included in the unitary business group. [;]~~

(2)(a) The **combined [unitary]** business group shall prepare the unitary income tax report in the name of the common parent, whether or not the common parent is a Kentucky corporation, or in the name of the principal Kentucky corporation if there is no common parent, denoted as "common parent and related corporations" or "principal Kentucky corporation and related corporations."

(b) The **combined [unitary]** income tax report shall bear the Kentucky corporation income tax account number of the principal Kentucky corporation.

Section 14. Accounting Periods. (1) General rule. The income or loss of the unitary business group shall be determined using the same accounting period for all members of the unitary business group in preparing a **combined [unitary]** income tax report.

(2)(a) The income or loss of all corporations in the unitary business group shall be determined on the basis of the taxable year of the common parent.

(b) Where there is no common parent in the unitary business group, the income or loss of all corporations in the unitary business group shall be determined on the basis of the taxable year of the principal Kentucky corporation.

(3)(a) The income or loss of any corporation in the unitary business group not having the same taxable year as the common parent or the principal Kentucky corporation shall be converted to the taxable year of the common parent or the principal Kentucky corporation on the basis of the number of months within the applicable taxable year.

(b)1. Where the pro rata method prescribed in paragraph (a) of this subsection requires the inclusion of the income of a corporation whose taxable year has not yet closed, an estimate of the income or loss based on available information shall be made.

2. Any difference between the estimate and the actual income or loss shall be included in the **combined [unitary]** income tax report for the succeeding taxable year of the unitary business group without regard to whether that corporation becomes a part-year member.

3. If the difference between the estimate and the actual income or loss is material, an amended return and an amended report may [shall] be required.

(4) The factors of the company whose income or loss is converted shall be computed using the actual accounting period prescribed in subsection (2) of this section.

(5) Example. If a common parent has a calendar taxable year and a subsidiary includable in the unitary business group has a September 30 taxable year, the unitary business group shall assign nine-twelfths (9/12) of the subsidiary's **combined business [unitary]** income of one (1) taxable year and three-twelfths (3/12) of the **combined business [unitary]** income of the succeeding taxable year to arrive at a full twelve (12) months' income for the subsidiary to be included in the **combined [unitary]** income tax report.

Section 15. Part-year Members. (1)(a) General rule. The accounting year of any corporation that is a part-year member of the unitary business group shall consist of two (2) short periods; ~~[-]~~

~~(2)(a) Any part-year member which is a Kentucky unitary corporation shall file;~~

1. ~~[A short period return for]~~ The period the part-year member was in the [a] unitary business group; and

2. ~~[A short period return for]~~ The period the part-year member was not in the [a] unitary business group or was in a different unitary business group.

(b) ~~[The short period return]~~ For the period the part-year member was in the [a] unitary business group it shall be included in the [a separate] income tax return of the unitary business group prepared in accordance with this administrative regulation ~~[that reflects the income or loss for the period in which the part-year member was a member of the unitary business group]~~.

(c) The short period return for the period the part-year member was not in a unitary business group ~~[or was in another unitary business group]~~ shall reflect the income or loss for the portion of the taxable year in which the part-year member was not part of the unitary business group and shall be determined using separate entity reporting ~~[if the part-year member was not in a unitary business group or the unitary method of reporting if the part-year member was in another unitary business group]~~.

(d) For purposes of KRS 141.140(3), "taxable net income" shall mean Kentucky taxable net income after the Kentucky net operating loss.

(3) Every unitary business group shall include in its combined [unitary] income tax report the short period of any part-year member that [which] is not a Kentucky corporation and that [which] was a member of the unitary business group subject to the provisions of this administrative regulation.

Section 16. Principal Kentucky Corporation. (1)(a) Every unitary business group shall designate the common parent as the principal Kentucky corporation provided the common parent is a Kentucky unitary corporation.

(b) If the common parent is not a Kentucky unitary corporation, the unitary business group shall designate any Kentucky unitary corporation as the principal Kentucky corporation.

(c) If the unitary business group fails to designate the principal Kentucky corporation, the cabinet shall designate a Kentucky unitary corporation as the principal Kentucky corporation.

(2) The principal Kentucky corporation established in subsection (1) shall continue to be the principal Kentucky corporation unless that corporation ceases to be a member of the unitary business group.

(3) The unitary business group shall designate the principal Kentucky corporation by filing a written statement with the combined [unitary] income tax report.

(4) The principal Kentucky corporation shall be responsible for:

(a) Filing the combined [unitary] income tax report including any extension, other report, or any other document required by KRS Chapters 131 and 141 on behalf of a unitary business group;

(b) Maintaining the records of the unitary business group relating to the combined [unitary] income tax report; and

(c) Coordinating the requests by the cabinet (including reviews and audits) for information to substantiate any item presented on the combined [unitary] income tax report.

~~[(5)(a) The principal Kentucky corporation may request an extension of time within which to file the separate income tax returns of all Kentucky unitary corporations in a unitary business group.]~~

~~(b) Any extension requested pursuant to paragraph (a) of this subsection shall state the name, address, federal identification number, and Kentucky corporation income tax account number of every Kentucky unitary corporation in the unitary business group.]~~

Section 17. This administrative regulation shall apply to taxable years beginning after December 31, 1995 ~~[1994]~~.

KIM BURSE, Secretary

APPROVED BY AGENCY: September 1, 1995

FILED WITH LRC: September 1, 1995 at noon

CABINET FOR HUMAN RESOURCES  
Department for Health Services  
Division of Health Systems Development  
(Amended After Hearing)

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

## ADMINISTRATIVE REGISTER - 769

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. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service after the effective date of this administrative regulation [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 or a licensed advanced registered nurse practitioner (ARNP) 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. These agreements shall be in writing and shall address the following:

~~[(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.

**(4) [(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.

**(5) [(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.

**(6) [(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.

**(7) [(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.

**(8) [(9)]** The interior of the ambulance and its equipment shall be checked [cleaned] after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

**(9) [(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.

**(10) [(11)]** The licensed BLS or ALS ground ambulance provider shall determine the minimum equipment required for tiered response

vehicles operating under their license.

**(11) [(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.

**(12) [(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.

**(13) [(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.

**(14) [(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 registered nurse by the KBN or as a physi-

cian by the KBML.

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 :

## ADMINISTRATIVE REGISTER - 773

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 ~~and/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.

**ADMINISTRATIVE REGISTER - 774**

RICE C. LEACH, M.D., Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: September 14, 1995

FILED WITH LRC: September 15, 1995 at noon



PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 1995

FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(Amendment)

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 344.030, 29 CFR Part 1630, 42 USC 12111(9)

STATUTORY AUTHORITY: KRS 61.645(9)(f)

NECESSITY AND FUNCTION: The statutes provide for disability benefits to members of the retirement systems and for a process of appealing a denial of disability benefits. This administrative regulation describes those procedures not otherwise provided in KRS Chapter 13B.

Section 1. (1) Application for disability benefits shall be made on the Notification of Retirement, Form 6, dated January 1991.

(2) The application shall be received in the retirement office within twelve (12) months of the employee's last day of paid employment in a regular full-time position, which shall consist of 365 calendar days of the employee's last day of paid employment in a regular full-time position. The period shall begin on the day after the last day of paid employment in the regular full-time position and shall end at close of business on the 365th day following. If the last day of the period is a Saturday, Sunday or holiday, then the application shall be valid if received in the retirement office by the close of the next business day following the weekend or holiday. The employer shall certify the last day of paid employment. The application may be submitted prior to the member's last day of paid employment.

Section 2. If the member is eligible to begin drawing early retirement benefits, the member shall be notified of his right to a retirement allowance while his disability application is being processed. Election of early retirement by the member shall not affect his application for disability retirement.

Section 3. An Employee's Job Description, dated August 1994, shall be completed by the member and submitted to the retirement office. The employer shall complete an Employer's Job Description, dated August 1994, and submit it to the retirement office. The descriptions shall be on the form provided by the retirement office. The retirement office may require additional details from the member and the employer on the member's job duties.

Section 4. The retirement office shall request the medical records of the member from the physicians or medical facilities named on the application. The member's physicians or medical facilities shall submit copies of all medical records, test results or other information applicable to the member to the retirement office. The member or his physicians may submit a current listing of the member's prescription medications. Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results. The retirement office shall pay a reasonable fee for the copies. Amounts above that paid by the retirement office for the copies shall be the responsibility of the member.

Section 5. The member shall provide to the retirement system information concerning his status with regard to Workers' Compensation and Social Security disability benefits.

Section 6. When both of the job descriptions and all medical information from at least two (2) physicians or medical facilities that have treated or examined the member have been received, the

information shall be submitted to the medical examiner.

Section 7. The medical examiner shall base his determination on the medical evidence contained in the member's retirement file and the member's residual functional capacity and exertional requirements. The medical examiner may contact the member or the member's physicians to request additional medical evidence.

Section 8. The time limits in KRS 61.665 for the member's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the member from the retirement office and shall continue until close of business on the date the member files the necessary action with the retirement office or the date the time period ends. The period shall toll until the member is in receipt of written notice from the retirement office of further denial. The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g). When the periods allowed under the statute have been exhausted, the member shall have no further right to appeal to the hearing officer.

Section 9. The member shall make a request for a formal hearing in writing. If the member is unable to attend or desires to reschedule a formal hearing, the member shall send the retirement office a request in writing prior to the date of the hearing, and the hearing officer may reschedule the hearing upon a finding of good cause.

Section 10. The hearing officer may allow the member to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the member. The hearing officer shall only consider competent medical evidence within or attached to the determination and shall not consider any vocational factors.

Section 11. (1) The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the member's retirement file. The prehearing conference is an informal procedure, presided over by the hearing officer. Every effort shall be made by all parties to dispose of controversies, to narrow and define issues and to facilitate prompt settlement of the claim.

(2) If at the conclusion of the prehearing conference the parties have not reached an agreement on all the issues, the hearing officer shall schedule a hearing to be held within a reasonable time.

(3) If the parties agree upon a settlement after the prehearing conference but before the hearing, the settlement agreement shall be filed with the hearing officer. The hearing shall be cancelled and notice of the cancellation shall be served on all parties.

Section 12. (1) If the member's application for disability is approved, the member's disability benefit shall be paid retroactive to the month following the month of the member's last day of paid employment.

(2) If the member did not receive early retirement benefits, upon the member's selection of a payment option, the retirement office shall pay the member the total monthly retirement allowances owed.

(3) If the member received early retirement benefits, the retirement office shall calculate and pay to the member the difference between the early retirement benefit which was paid to the member and the disability benefit. The member shall not change his payment option.

(4) If benefits are payable to dependent children, as defined in KRS 16.505(17), the following is required:

(a) The parent or guardian shall provide the names, Social

## ADMINISTRATIVE REGISTER - 776

Security numbers and copies of the birth certificates of each dependent child.

(b) If a dependent child is a minor, an Affidavit of Authorization to Receive Benefits on Behalf of Minor, Form 37, dated August 1994, shall be completed.

(c) If a dependent child is age eighteen (18) or over, the parent or guardian shall provide the system with a statement of the child's marital status, the name of the school in which the dependent child is enrolled as a full-time student and a copy of the dependent child's class schedule.

(d) The parent or guardian shall notify the system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student. Upon request, the parent or guardian shall provide a copy of the dependent child's current class schedule.

(5) Any increases provided to recipients under KRS 61.691 shall be applied to the member's disability benefit and payments to dependent children in determining the total retroactive payments owed to the member and dependent children.

Section 13. When a member whose application for disability benefits has been previously denied subsequently submits a disability application accompanied by medical evidence pursuant to KRS 16.582(2)(e) or 61.600(1)(e), a medical examiner shall determine from the evidence if a substantial change has occurred in the member's condition. If the medical examiner determines that a substantial change has occurred, the application shall be processed under the provisions of KRS 61.665. If the medical examiner determines that a substantial change has not occurred, the application shall not be accepted. The member shall have no further administrative proceedings, but may appeal to Franklin Circuit Court.

Section 14. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

FRANK W. BURKE, Chairman

APPROVED BY AGENCY: August 17, 1995

FILED WITH LRC: September 11, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1995, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 this 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Members of KERS, CERS and SPRS who apply for disability benefits and who appeal a denial of benefits.

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

is no cost associated with this regulation. The amendments conform to changes enacted by the 1994 General Assembly (KRS Chapter 13B) which establish a uniform administrative hearing procedure.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No additional cost is anticipated.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Since hearing procedures are essentially the same, no impact is anticipated.

(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 are no additional paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Administrative expenses are paid from employer contributions. There is no cost associated with 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: This regulation does not affect economic activities.

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

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The regulation has been made to conform to changes enacted by the 1994 General Assembly.

(8) Assessment of expected benefits: Hearing procedures for disability benefits will conform with hearing procedures for other state administrative processes.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(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: No statute or regulation is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. This regulation makes the Kentucky Retirement System disability hearing procedure conform to the requirements of KRS Chapter 13B.

FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(Amendment)

105 KAR 1:215. Administrative hearing.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(16)

NECESSITY AND FUNCTION: The statutes provide that an affected person aggrieved by a decision of the system, which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing prior to the filing of an appeal in court. This administrative regulation establishes the administrative appeal procedures not otherwise provided in KRS Chapter 13B. ~~[process.]~~

Section 1. Definition. "Affected person" means a member, retired member or recipient as defined in KRS 16.505, 61.510 and 78.510.

Section 2. When the system takes action which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except action which relates to entitlement to disability benefits, the system shall notify the affected person of the opportunity to request a hearing. The notification shall be contained in the notice of action. An affected person may request a hearing by submitting such request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the general manager of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.

Section 3. Failure of the affected person to request a formal hearing within the period of time specified shall preclude the affected person from requesting a hearing at a later time.

Section 4. (1) ~~[Upon request, the system shall schedule a hearing to be held not more than sixty (60) days after the request for a hearing has been received by the system unless otherwise agreed. The notice of hearing shall be served as described in Section 10 of this administrative regulation and shall include a statement of the time, place and nature of the hearing.]~~

~~(2) The hearing officer may request a prehearing conference or may consider new evidence not already part of the affected person's file.~~

~~Section 5.] The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.~~

~~(2) The hearing officer may request a prehearing conference or may consider new evidence not already part of the affected person's file. The prehearing conference is an informal procedure, presided over by the hearing officer. Every effort shall be made by all parties to dispose of controversies, to narrow and define issues and to facilitate prompt settlement of the claim.~~

~~(3) If at the conclusion of the prehearing conference the parties have not reached an agreement on all the issues, the hearing officer shall schedule a hearing to be held within a reasonable time.~~

~~(4) If the parties agree upon a settlement after the prehearing conference but before the hearing, the settlement agreement shall be filed with the hearing officer. The hearing shall be cancelled and notice of the cancellation shall be served on all parties.~~

~~[Section 6. Any party to a hearing may be represented by~~

~~counsel, make oral or written argument, offer testimony, orally or by deposition, cross-examine witnesses, introduce direct testimony from an expert approved by the hearing officer through a written report, take any combination of these actions. Witness testimony may be given by deposition in lieu of personal appearance. An impartial hearing officer appointed and paid by the board shall preside at the hearing, keep order and conduct the hearing. Oaths and affirmations shall be administered by the hearing officer or court reporter. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for a default.~~

~~Section 7. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Upon request, parties shall be given an opportunity to compare any copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the system's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The system's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.~~

~~Section 8. The hearing officer shall prepare findings of fact and conclusions of law based on the evidence appearing in the record as a whole and make a recommendation.]~~

~~Section 9. [9.] The hearing officer shall, within thirty (30) days of the close of the formal hearing, make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. [If the board finds upon written request of the hearing officer that additional time is needed, then the board may grant a reasonable extension.] The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file [within fourteen (14) days of mailing of the hearing officer's report and recommended order] exceptions to the report and recommended order. There shall be no other or further submissions.~~

~~Section 10. [10.] The board shall consider the report and recommended order and any exception filed and pass upon the case within a reasonable time. The board may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the board's final order, or issue their own final order.~~

~~Section 11. [11.] The system shall mail the final decision of the board to the affected person or his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative at the time of the granting of the extension.~~

~~[Section 12. The board shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.]~~

## ADMINISTRATIVE REGISTER - 778

Section 8. ~~[13.]~~ A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

~~[Section 14. There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer regarding an affected person.]~~

Section 9. ~~[15.]~~ Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.

Section 10. ~~[16.]~~ All requests for a hearing pursuant to this section shall be made in writing.

Section 11. ~~[17.]~~ The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

Section 12. ~~[18.]~~ Any affected person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS Chapter 13B ~~[61-645(16)]~~.

Section 13. ~~[19.]~~ Any proposed order or order shall be served by one (1) of the following methods:

(1) The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall forthwith enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.

(2) The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(3) The methods of service specified herein shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: August 17, 1995

FILED WITH LRC: September 11, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 1995, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 this 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Individuals who are aggrieved by a decision of the system and who seek an administrative hearing.

(2) Direct and indirect costs or savings to those affected: There is no cost associated with this regulation. The regulation is being amended to conform the provisions of KRS Chapter 13B.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is no change in reporting or paperwork requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement systems.

(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:

This regulation does not impact state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with 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: This regulation does not affect economic activities.

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

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The amendments to this regulation is in conformance with the requirements of KRS Chapter 13B.

(8) Assessment of expected benefits: The hearing procedure is being made to conform with the uniform hearing procedure in KRS Chapter 13B.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(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: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering does not apply. The hearing procedure is the same for all individuals aggrieved by a decision of the system.

**FINANCE AND ADMINISTRATION CABINET  
(Amendment)**

**200 KAR 2:006. Employees' reimbursement for travel.**

RELATES TO: KRS 44.060, 45.101

STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY AND FUNCTION: 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 administrative regulations for that purpose. The purpose of this administrative regulation is to specify eligibility, requirements, rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury. The amendments to this administrative regulation: (1) defines the term "residence"; (2) increases per diem allowances for nonhigh rate and high rate areas; and (3) increases mileage reimbursement rate for privately owned vehicles, "agency head" and the phrase "others in the official service of the Commonwealth"; (2) ~~clarifies those individuals eligible for travel reimbursement; (3) establishes the requirement that all out-of-state travel must be authorized in advance by the agency head and the Secretary of the Finance and Administration Cabinet or their designees; (4) establishes the requirement that travel outside the United States, its possessions and Canada shall be authorized by the agency head, the secretary and the Governor or the designated representatives; (5) clarifies the eligibility requirements for receiving subsistence while traveling in and outside Kentucky; (6) clarifies those persons eligible for reimbursement for actual and necessary expenses; and (7) establishes the documentation required to receive reimbursement for actual and necessary expenses.~~

Section 1. Definitions. As used in this administrative regulation, unless the context requires otherwise:

(1) "Cabinet" means the Finance and Administration Cabinet.

(2) "Division" means the Division of Accounts of the Finance and Administration Cabinet.

(3) "High rate area" means a city or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area. The cabinet's policies and procedures manual contains a list of "high rate areas".

(4) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(5) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(6) "Agency head" means the elected or appointed head of a budget unit.

(7) "Others in the official service of the Commonwealth" means persons who are not state employees as defined in KRS Chapter 18A, but who are travelling on official business for the Commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request. This definition shall not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the Commonwealth.

(8) "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for

meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

(9) "Residence" means address of the employee designated in the official records of the Department of Personnel.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government. It shall not apply to the Legislative and Judicial branches and their employees.

(2) Enforcement.

(a) Each agency head shall be responsible for ensuring ~~insuring~~ ~~that~~ all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:

1. State on the travel voucher the purpose of each trip;
2. Maintain records and receipts to support his claim; and
3. Provide himself with sufficient personal funds to defray his travel expense.

(c) A travel expense claim shall be submitted on Travel Voucher (DOA-34).

(d) The secretary shall be responsible for ensuring that travel reimbursement conforms to the provision of this administrative regulation.

(e) The secretary or his designee may:

1. Disallow, or reduce the amount of a claim that violates the provisions of this administrative regulation; or
2. Require written justification from an agency head for amounts claimed by an agency for its employee.

(f) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or his designee, submits a written determination that establishes ~~that~~ such reimbursement is:

1. Required to avoid an undue economic hardship on the employee; or
  2. Economically advantageous for the Commonwealth.
- (3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the Commonwealth. Only necessary expenses of official travel shall be reimbursed.
- (4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determination shall be final and conclusive.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the Commonwealth, not an employee's convenience. The designation of work station shall not be for the purpose of allowing additional mileage reimbursement for the employee.

(3) If an employee is permanently reassigned, or is stationed at a new place two (2) months, the new place shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky the person requesting reimbursement shall obtain authorization from the agency head or a designated representative.

(2) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (3) through (5) of this section.

(3) For travel outside Kentucky, but within the United States or its possessions, or Canada the person requesting reimbursement shall

## ADMINISTRATIVE REGISTER - 788

Section 10. Escort Vehicle and Flag Requirements. (1) Required escort vehicles shall accompany the overdimensional [permitted] vehicle at a distance of 300 feet (91.44 meters) on open highways.

(2) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times.

(4) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead escort.

(5) On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead escort and one (1) trail escort.

(6) On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.

(7) On a four (4) lane or wider highway, a vehicle and load shall have one (1) trail escort if:

(a) Its width exceeds twelve (12) feet (3.66 meters); or

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour).

(8) On a two (2) lane highway, a vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead escort. If the vehicle and load exceed eighty-five (85) feet (25.91 meters) on a two (2)-lane highway, it shall have one (1) lead and one (1) trail escort.

(9) On a four (4) lane or wider highway, a vehicle and load with a length of 110 feet (33.53 meters) or greater shall have one (1) trail escort.

(10) Red or orange fluorescent flags which are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) Vehicles operating overwidth shall display two (2) warning flags, one (1) on each side of the vehicle or load at its widest extremities.

(b) Vehicles operating overlength or with a rear end overhang shall display two (2) warning flags at the extreme rear of the vehicle or load. These flags shall be located to indicate maximum width of the rear end.

(11) All vehicles exceeding ten and one-half (10.5) feet three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters on a yellow background, "OVERSIZE LOAD";

(b) Be not less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high;

(c) Have a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters); and

(d) Be fastened at the front of the power unit and the rear end of the towed unit or at the rear of the load.

(13) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

Section 11. Liability. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of overdimensional vehicles shall be the responsibility of the permit holder or transporter where a permit is not required.

(2) The permit holder or transporter where a permit is not required shall either repair all damage incurred or pay for the repair.

Section 12. 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 Division of Motor Carriers by the payment of ten (10) dollars. Only

one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

NORRIS BECKLEY, Commissioner

J. M. YOWELL, P.E., State Highway Engineer

JERRY D. ANGLIN, Deputy Secretary, Commissioner

DON C. KELLY, P.E. Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: August 16, 1995 at 3 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on October 27, 1995 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building, 501 High Street, located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by October 22, 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 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 October 27, 1995. If you have a disability for which the Transportation Cabinet needs to make an accommodation, please contact Sandra G. Pullen as set forth below. This communication does not have to be in writing. 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, 10th Floor, 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 who transport overweight or overdimensional vehicles in Kentucky unless the transportation falls under the purview of one of the following administrative regulations: 601 KAR 1:015, 601 KAR 1:016, 601 KAR 1:020, 603 KAR 5:100, 603 KAR 5:105, 603 KAR 5:110, 603 KAR 5:112, 603 KAR 5:230, 603 KAR 5:260, 603 KAR 5:270.

(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 public comment hearing was not held on the notice of intent to promulgate. However, no impact is expected on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held on the notice of intent to promulgate. However, no impact is expected on the cost of doing business.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: 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:

The additional fee struck from this administrative regulation was based on the fee found in KRS 189.270. This additional fee was



## ADMINISTRATIVE REGISTER - 789

struck down as unconstitutional by the Kentucky Courts. Therefore, the administrative regulation was revised to match the court ruling. There is no loss of state revenues as a result of the change to this administrative regulation. The loss of revenue is as a result of the court's decision.

(5) Sources of revenue to be used for implementation and enforcement of administrative regulation: Kentucky 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: A public comment hearing was not held on the notice of intent to promulgate. However, no impact is expected on the economy.

(b) Kentucky: A public comment hearing was not held on the notice of intent to promulgate. However, no impact is expected on the economy.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There was no alternate to removing the reference to the additional fee after the court's ruling. The application of the safety requirements to the movements of a farmer were agreed upon several years ago when the Transportation Cabinet amended this administrative regulation to not require the farmers to obtain an overdimensional permit when moving their larger equipment upon the highways. However, in recent months there have been several accidents involving farmers moving larger pieces of equipment without following the safety requirements. To put this new generation of farmers on notice that they must comply with the safety requirements, this administrative regulation had to be amended.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Increased highway safety will result, particularly in western Kentucky, if the farm community follows the safety requirements when transporting larger dimensioned vehicles or equipment upon the state highways.

(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: Continued decrease in highway safety in rural areas when farmers who are unaware of the safety requirements operate overdimensional motor vehicles.

(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? Yes, tiering was applied by requiring more safety items the larger the vehicles being transported over state highways.

### TRANSPORTATION CABINET Department of Highways Division of Transportation Planning) (Amendment)

**603 KAR 5:115. Coal-haul highway system; reporting requirements.**

RELATES TO: KRS 42.455(8), 177.977, 177.9771

STATUTORY AUTHORITY: KRS 42.455(8), 174.080, 177.977

NECESSITY AND FUNCTION: KRS 42.455 designates the Kentucky Transportation Cabinet as the agency responsible for the identification of public highways, roads and streets that comprise the official coal-haul highway system. In addition, both KRS 42.455 and

177.977 require the Transportation Cabinet to publish this information in a directory on an annual basis. In order to discharge this responsibility, the cabinet must gather pertinent information from all coal shippers or owners regarding the movement of coal in Kentucky. This administrative regulation specifies the procedures and intervals to be used in reporting this information to the Transportation Cabinet. In addition, KRS 177.9771 requires the coal road system transportation report to include coal by-products. Allowing the transportation of coal by-products to be reported to the Transportation Cabinet is necessary in order for the cabinet to prepare this report.

Section 1. Definitions. (1) "Owner" means any individual, partnership, joint venture, association or corporation who owns the coal at the time of transport.

(2) "Interval" means a semiannual [quarterly (three (3) months)] reporting period. The first interval of each calendar year shall be January 1 through June 30. The second interval of each calendar year shall be July 1 through December 31.

(3) "Coal by-product" means any of the following:

- (a) Fly ash;
- (b) Bottom ash;
- (c) Wet bottom boiler slag;
- (d) Scrubber sludge;
- (e) Burned coal waste known as [red dog];
- (f) Coal slag; or [and]
- (g) Coal cinders.

Section 2. Reporting Requirements. (1) On or before the 20th day of the month following the interval in which any coal is shipped over public highways, roads, or streets by or on behalf of any owner from a mine mouth or pit to a processing plant, tipple, loading dock, or customer, or from any of the foregoing locations to another of these locations, the owner shall file a report on Form TC 59-100, Coal Shipment Route and Tonnage Report. This form, last revised in August, 1995, is incorporated by reference as a part of this administrative regulation. [Forms designated and furnished by the cabinet. This report is to be filed with the Kentucky Transportation Cabinet, Department of Highways, Division of Planning and contain information required by the cabinet relative to the ton miles of coal transported on the public highways, streets, and roads of each county in or through which coal was transported.]

(2) Form TC 59-100 shall be completed by providing the following information about the coal being reported:

- (a) Origin;
- (b) Destination;
- (c) Tons; and
- (d) Approximate highway mileage including state-maintained highways, county roads, and city streets.

(3) Form TC 59-100 is mailed semiannually in December and June by the Division of Transportation Planning to various entities involved with mining, processing, transporting, or brokering coal.

(4) Nonreceipt of the mailed form shall not be justification for not submitting the required information.

(5) Blank copies of the form TC 59-100 may be viewed, copied, or obtained from the Division of Transportation Planning, 125 Holmes Street, Frankfort, Kentucky 40622. The office telephone number is (502) 564-7183.

Section 3. Reporting Responsibility. (1) It is the exclusive responsibility of an owner of any coal transported over the Commonwealth's highways to ensure that the coal transportation is reported accurately to the Transportation Cabinet. The reporting may be done by the owner, his agent, contractor, processor or shipper.

~~(2) The owner is responsible for obtaining and reporting the origin, the destination, the tons and approximate highway mileage on each route or road for all coal transported on public highways or streets when the coal is sold by a person or organization, such as a~~



## ADMINISTRATIVE REGISTER - 790

broker, or when the coal is transported by another individual or firm engaged in trucking coal for hire.

~~(3) An owner who is not engaged in the transportation of coal in any way shall notify the cabinet of the precise nature of his operations in order that his address may be removed either temporarily or permanently from the mailing list of these firms to which forms are periodically sent. Likewise,~~

(2)(a) Owners who ship no coal during an interval shall inform the cabinet of that fact on or before the due date for that interval's report.

(b) Owners not engaged in the transportation of coal in any way and who have no active coal severance tax number may notify the cabinet of the precise nature of their operations in order that their names may be temporarily or permanently removed from the cabinet's mailing list.

Section 4. [3-] Reconciliation of Data. The Division of Transportation Planning in the course of its normal duties may delete duplicate information, reconcile ambiguities, and correct errors prior to finalizing the report. To accomplish this the division may consider prior year reports and other relevant information concerning coal transportation routes in Kentucky. However, ~~[no]~~ corrections shall not [may] be made to the reported data after it is submitted to the Department for Local Government as required by KRS 42.455.

Section 5. [4-] Reporting of Coal By-products. (1) Coal by-product transportation information may be reported to the Transportation Cabinet in the same manner as coal transportation information and on the same forms designated and furnished by the cabinet.

(2) [However,] Coal by-product information shall be reported separately from the information required on coal transportation. Across the top of the TC 59-100 Form the person reporting the shipment of coal by-product shall clearly type or mark in all capital letters "MATERIAL SHIPPED IS COAL BY-PRODUCT, NOT COAL."

Section 6. Extended Weight Coal and Coal By-products Haul System. (1) The data collected and compiled from Form TC 59-100 shall be the basis for the Transportation Cabinet's designating the road segments included in the Extended Weight Coal or Coal By-products Haul System in 603 KAR 5:230.

(2) Failure of an owner to submit the required data relative to the transportation of either coal or coal by-products may result in the omission of a road segment from inclusion in 603 KAR 5:230.

J.M. YOWELL, P.E., State Highway Engineer  
JERRY ANGLIN, Deputy Secretary and Commissioner  
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 8, 1995

FILED WITH LRC: September 14, 1995 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 27, 1995 at 2 p.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by October 22, 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 October 22, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will be accepted until close of business on October 27, 1995.

Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

### REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All owners or transporters of coal in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment hearing held.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment hearing held.

(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 persons required to submit the coal transportation reports will no longer have to submit 4 reports a year. They will only have to submit 2 reports each year.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet will only have to enter the data into the computer system twice a year instead of 4 times a year.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: No public comment hearing was held.

(b) Kentucky: No public comment hearing was held.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The no-change alternative was rejected because with the down-sizing of state government, entering the data 4 times a year is a nonessential use of man-power. While the number of reportings will be reduced, the total amount of data will be unchanged.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The reporting requirements must be the same for all of the transporters of coal. Without this consistency the Transportation Cabinet will be unable to prepare the coal transportation reports required by state law.

## ADMINISTRATIVE REGISTER - 791

### TRANSPORTATION CABINET Department of Highways Division of Operations (Amendment)

603 KAR 5:301. Weight (mass) classification of the state-maintained system of highways.

RELATES TO: KRS 189.222

STATUTORY AUTHORITY: KRS 189.222

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of the Transportation Cabinet to establish by official order reasonable weight (mass) limits for all highways included in the state-maintained system of highways. This administrative regulation is promulgated to identify and incorporate by reference the Official Order and Guidance Manual setting forth each road in the state-maintained system and to indicate the classification of each. The classification of each highway segment in conjunction with 603 KAR 5:066 establishes the weight (mass) limit for trucks using each road segment.

Section 1. (1) The Official Order 95754 [94422] of the Transportation Cabinet as authorized on August 15, 1994 [September 10, 1992] and adopted in the "Truck Weight Classification Guidance Manual" on August 19, 1994 [September 25, 1992] is hereby incorporated by reference as a part of this administrative regulation. This Official Order and Guidance Manual shall govern the weight (mass) classification of each highway segment in the state-maintained system of highways.

(2) A copy of the Guidance Manual incorporated by reference may be viewed at any of the Department of Highways district offices or Department of Vehicle Regulation weigh stations. It may be viewed, copied or purchased for twelve (12) dollars from the Division of Management Services, Tenth Floor, 501 High Street, Frankfort, Kentucky 40622. This purchase price includes all subsequent amendments to the Official Order and Guidance Manual. The telephone number of the Division of Management Services is (502) 564-6927. It's hours of operation are 8 a.m. until 4:30 p.m. eastern time on weekdays.

Section 2. Any state-maintained highway segment not specifically identified in Official Order 95754 [94422] shall have an "A" highway classification.

J.M. YOWELL, P.E., State Highway Engineer  
JERRY ANGLIN, Deputy Secretary and Commissioner  
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: August 16, 1995

FILED WITH LRC: September 12, 1995 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 27, 1995 at 10 a.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by October 22, 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 October 22, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will be accepted until close of business on October 27, 1995.

Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

### REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All operators in Kentucky of motor vehicles with a gross weight rating in excess of 36,000 pounds.

(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 comment hearing held.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment hearing held.

(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 changes as a result of this administrative regulation change. Indirect savings results from including all of the road segments recently completed in this administrative regulation. Without the roads being listed in the Official Order incorporated in this administrative regulation, legally they are not open to use by any motor vehicle with a gross weight above 36,000 pounds. Practically speaking, no one would object to the use of trucks on one of the new bypasses listed in the official order incorporated by reference. The indirect savings is the specification of the highways which can legally be used by the trucks with higher weights.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

There will be a slight increase in productivity with the opening of the new highway segments on which heavier vehicles are allowed to operate. However, determining amounts is impossible. Many times the highway segments are constructed specifically for heavier vehicles or to alleviate traffic congestion.

(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: No public comment hearing was held.

(b) Kentucky: No public comment hearing was held.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any highway in the state-maintained system should be listed in this the Official Order incorporated in this administrative regulation because the least gross weight allowed by this Official Order on a state-maintained highway is 44,000 pounds compared to 36,000 pounds on roads not listed.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The roads which have been transferred from the state-maintained system of highways to county ownership legally have a weight limit of 36,000 pounds. While practically speaking, no one is likely to be issued a citation for operating an 80,000 pound tractor-semi-trailer combination on a county road accessing a landfill, such a citation for overweight would be valid. Kentucky state law does not give county governments the ability to establish a weight limit higher than 36,000 pounds on any local road, regardless of its weight bearing capabilities. Cities, however, are given this ability by KRS 189.280(3).

(11) TIERING: Is tiering applied? Yes. All highway segments listed have been tiered with the assignment of a classification based on their weight bearing capabilities.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Housing, Buildings and Construction**  
**(Amendment)**

**815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.**

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) contracting business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors. This amendment is necessary to delete language regarding the "grandfather clause" and update the application form to the current date.

Section 1. Definitions. (1) ~~["Actively engaged" means that the applicant has personally contracted for HVAC business in Kentucky, such as installing, servicing and repair over the three (3) year period of time required by Section 6 of this administrative regulation.~~

(2) ~~"Current valid Kentucky local government HVAC contractor license" means a document issued by any Kentucky local government which qualifies the person to engage in the HVAC business as a contractor. It shall not mean an occupational license tax document.~~

(3) ~~"HVAC" means heating, ventilation and air conditioning, hydronic and burner service systems as defined in KRS 198B.650(1), (2), (8), (9) and (15).~~

(4) ~~"Immediate" or "immediately" means the time period after January 1, 1990, in which the experience necessary to qualify one to be licensed may have occurred.~~

(5) ~~"Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems. If the individual is representing a company, the license issued in the name of the individual shall also name the company.~~

(2) ~~[(6)]~~ "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master.

(3) ~~[(7)]~~ "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent

judgment regarding activities of others acting under his direction.

Section 2. General Requirements. (1) Mandatory licensure. ~~[Effective July 1, 1995,]~~ Any person, other than one exempted by KRS 198B.674, who is engaged in the business of HVAC contracting shall comply with applicable administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Beginning July 1, 1996, each licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) Supervision. The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee. The master shall assign each apprentice to the oversight of one (1) or more journeyman. The master shall not personally engage in actual installation, maintenance, alteration or remodeling or repair unless the master also possesses a journeyman license.

(4) Company license. A licensee who is an employee of a company whom the licensee is representing shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 8(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a master HVAC contractor license shall meet all of the following application requirements:

(a) The applicant shall submit the Master HVAC Contractor License Application Form HVAC 1, September, 1995 ~~[November, 1994]~~, hereby incorporated by reference, to the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application form shall be accompanied by a nonrefundable initial license application fee of \$100; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience as a contractor in the business of installation, alteration, maintenance and performance of repairs and alteration of HVAC systems, as required by Sections 5 and 6 of this administrative regulation; and

(f) The applicant shall supply a certificate of insurance showing general liability insurance in the minimum amount of \$500,000, including at least \$300,000 for property damage. The named insurance carrier shall be a company which holds a certificate of authority from the Kentucky Department of Insurance; and

(g) If the applicant is an employee representing a company, the company name shall be stated on the application form. The company may provide the insurance certificates required by paragraph (f) of this subsection and shall be subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. ~~[Except for those applicants seeking a license pursuant to Section 6 (the "grandfather clause") of this administrative regulation,]~~ Each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the

proper installation, maintenance, repair, remodeling or alteration of all types of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the test [examination] known as "Kentucky Master Heating, Ventilation and Air Conditioning Contractor Examination" with a passing grade of seventy-five (75) percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, or other testing agency approved by the board.

(5) The examination fee shall be fifty (50) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section.

(1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience in the HVAC business obtained after July 1, 1995, shall be for HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to [during the three (3) years immediately preceding July 1, 1994, through] July 1, 1995 [i.e., between January 1, 1990 and July 1, 1995], shall be for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.

(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

~~[(3) "Grandfather" exception. Applicants seeking licensure without examination shall comply with the experience and other requirements of Section 6 of this administrative regulation.]~~

~~Section 6. Grandfather Clause. (1) Applicants shall be licensed without examination pursuant to this section.~~

~~(2) Applicants filing applications prior to July 1, 1995, shall have either:~~

~~(a) A minimum of three (3) years experience actively engaged and lawfully established as a HVAC contractor immediately prior to July 1, 1994 (that is between January 1, 1990 and July 1, 1994); or~~

~~(b) A current valid Kentucky local government HVAC contractor license which has been in effect since at least July 1, 1994; or~~

~~(c) A minimum of eight (8) years public school HVAC experience immediately prior to July 1, 1994, pursuant to KRS 198B.662(4).~~

~~(3) To qualify for licensure without examination, the application shall be completed and all fees, including proof of insurance, shall be provided before the master HVAC contractor license shall be issued.~~

~~(4) The deadline for filing the fee and signed application form shall be July 1, 1995.~~

~~(5) Affidavit of experience. If applying under the grandfather clause, the applicant shall complete and file, with the application form, the "Grandfather Clause Affidavit of Experience" Form HVAC-1(a),~~

~~November, 1994, hereby incorporated by reference. Copies available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky, between 8 a and 4:30 p.m., Monday through Friday.~~

~~(6) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown or sworn to is insufficient or nonexistent.]~~

Section 6. [7.] Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, application for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year to be returned, together with the required fee.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) Licenses which have been placed in inactive status are exempt from annual renewal. They shall be reactivated upon payment of a renewal fee for the year reactivated, the reactivation fee and compliance with continuing education requirements for each year of inactive status.

(6) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if any of the following occur:

(a) The applicant fails to pay the fees required for renewal, reactivation and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board; or

(c) The applicant fails to provide the current insurance certificate.

Section 7. [8.] Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until such time as the licensee requests reactivation.

(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 6[7](5) of this administrative regulation.

(4) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 2(4) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 8. [9.] Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner  
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 13, 1995

FILED WITH LRC: September 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 24, 1995 at 10 a.m., local time, 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 October 19, 1995, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: All new applicants for licensure.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment does not affect the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required.

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: No costs or savings as a result of this amendment.

2. Continuing costs or savings: No costs or savings as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Regular processes used.

(4) Assessment of anticipated effect on state and local revenues: No effect on local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fee of \$100 each for 1000 HVAC contractors.

(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 an amendment to eliminate the grandfather clause. Rejected only one test to allow potential flexibility.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Licensing HVAC contractors will improve the safety and health of the public throughout the state by establishing minimum requirements for engaging in the HVAC business.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Regulation would be less flexible and more confusing.

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

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering applied in sense that some applicants may be able to utilize equivalent credentials or tests.

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

**815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.**

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics. This amendment is necessary to delete language regarding the "grandfather clause" and update the application form to the current date.

Section 1. Definitions. (1) ~~"Actively engaged" means that the applicant has been employed in the HVAC trade in Kentucky, such as installing, servicing and repair, including supervision, management and estimating such systems over the three (3) year period required by Section 6 of this administrative regulation.~~

~~(2) "Current valid Kentucky local government HVAC mechanic license" means a document issued by any Kentucky local government which qualifies a person to engage in HVAC mechanical work. It shall not mean an occupational license tax document.~~

~~(3) "HVAC" means heating, ventilation and air conditioning, hydronic and burner service systems as defined in KRS 198B.650(1), (2), (8), (9) and (15).~~

~~(4) "Immediate" or "immediately" means the time period after January 1, 1990, in which the experience necessary to qualify one (1) to be licensed may have occurred.~~

~~(2) [(5)] "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems.~~

~~(3) [(6)] "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master HVAC contractor.~~

Section 2. General Requirements. (1) Mandatory licensure. Effective July 1, 1995, any person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.

(2) Continuing education. Beginning July 1, 1996, each journeyman licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems

and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a journeyman license shall meet all of the following application requirements:

(a) The applicant shall submit the journeyman HVAC Mechanic Application Form HVAC 2, September, 1995 ~~November, 1994~~, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application shall be accompanied by a nonrefundable initial license application fee of fifty (50) dollars; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience in the installation, alteration, maintenance and performance of repairs on and alteration of HVAC systems, as required by Section ~~5~~ 5 and 6 of this administrative regulation; and

(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. ~~[Except for those applicants seeking a license pursuant to Section 6 (the "grandfather clause") of this administrative regulation,]~~ Each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the test [examination] known as "Kentucky Journeyman Heating, Ventilation and Air Conditioning Mechanic Examination" with a passing score of seventy (70) percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section. (1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to [during the three (3) years immediately preceding July 1, 1994 through] July 1, 1995 [i.e.,

between January 1, 1990 and July 1, 1995,] shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another Kentucky HVAC contractor ~~[in Kentucky].~~

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

~~[(5) "Grandfather" exception. Applicants seeking licensure without examination shall comply with the experience and other requirements of Section 6 of this administrative regulation.]~~

~~Section 6. Grandfather Clause. (1) Applicants shall be licensed without examination pursuant to this section.~~

~~(2) Applications filed prior to July 1, 1995, shall have either:~~

~~(a) A minimum of three (3) years experience actively engaged and lawfully qualified working on HVAC systems as a self-employed contractor/mechanic or under the supervision of another HVAC contractor immediately prior to July 1, 1994 (i.e., between January 1, 1990 and July 1, 1994); or~~

~~(b) A minimum of eight (8) years public school HVAC experience immediately prior to July 1, 1994, pursuant to KRS 198B.662(4).~~

~~(3) To qualify for licensure without examination, the application shall be completed with all required fees paid prior to issuance of the journeyman license.~~

~~(4) The deadline for filing the fee and signed application form shall be July 1, 1995.~~

~~(5) Affidavit of experience. If applying under the grandfather clause, the applicant shall complete and file with the application form the "Grandfather Clause Affidavit of Experience Form HVAC 2(a), November, 1994", hereby incorporated by reference. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.~~

~~(6) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown or sworn to is insufficient or nonexistent.]~~

Section 6. ~~[7.]~~ Renewal Requirements and Procedures. (1) Applications for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of twenty-five (25) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) The application for renewal of a licensed journeyman HVAC mechanic shall be denied if any of the following occur:

(a) The applicant fails to pay the fees required for renewal and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board.

Section 7. ~~[8.]~~ Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses,



## ADMINISTRATIVE REGISTER - 796

pursuant to Section ~~6~~(3) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 8. ~~[9-]~~ Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 14, 1995

FILED WITH LRC: September 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 24, 1995 at 10 a.m., local time, 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 October 19, 1995, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

### REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: All new applicants for licensure.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment does not affect the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required.

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: No costs or savings as a result of this amendment.

2. Continuing costs or savings: No costs or savings as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Regular processes used.

(4) Assessment of anticipated effect on state and local revenues: No affect on revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fee of \$50 each for new 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 an amendment to eliminate the grandfather clause. Rejected only one test to allow potential flexibility.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Licensing journeyman mechanics will improve the safety and health of the public throughout the state by establishing minimum requirements for employment as an HVAC mechanic.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Regulation would be less flexible and more confusing.

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

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering applied in sense that some applicants may be able to utilize equivalent credentials or tests.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

#### 815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. These [This] products were [was] approved by the Plumbing Code Committee at their May 22, 1995 [9-1994] meeting.

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest



edition of the specification.

(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Waste-water Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashesaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with

steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Thermo-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-

## ADMINISTRATIVE REGISTER - 798

DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

17. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480, all requiring an approved pressure and temperature relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G

and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a saifing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through eighteen (18) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without

the requirement of a cleaner or primer.

CHARLES A. COTTON, Commissioner  
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 13, 1995

FILED WITH LRC: September 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 24, 1995 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 19, 1995, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation.

Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There will be no impact on the cost of living or employment with this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Provides ability of manufacturer to market his product 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:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(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: Unchanged by this amendment.

(4) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(5) Source of revenue to be used for implementation and enforcement of 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:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A 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:

(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: This is the only known law or policy dealing with this product.

(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 used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

**815 KAR 20:078. Storage and installation of SDR 11, CPVC plastic pipe and fittings.**

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the method needed for storage, handling and installation of standard dimension ratio (SDR) 11, chlorinated poly(vinyl chloride) (CPVC) plastic pipe and fittings. This administrative regulation is being amended to allow the use of a newly developed product that has been deemed equal to that which has been required in the past.

Section 1. Storage and Handling. (1) Chlorinated poly(vinyl chloride) (CPVC) pipe, tubing and fittings shall be stored under cover to avoid unnecessary dirt accumulation and long-term exposure to sunlight. Pipe and tubing shall be stored with continuous support in straight, uncrossed bundles. Care shall be used in handling to avoid unnecessary abuse such as abrasion on concrete or crushing.

(2) Solvent cement and primers, because of flammability, shall be stored in an area where there shall be no exposure to ignition, sparks, open flames or heat. Solvent cement and primers shall not be used beyond their marked shelf life.

Section 2. Installation. (1) Correct assembly shall consist of the following steps:

(a) Cut the pipe square;

(b) Remove burrs;

(c) Clean both pipe end and fitting socket with a recommended CPVC cleaner, unless using an approved one (1) step cement;

(d) Apply a liberal coat of CPVC solvent cement to the pipe and apply a light coat of cement to the fitting socket; removing all excess cement from the interior which may clog the waterway;

(e) Assemble immediately by bottoming the pipe in the socket and rotating one-quarter (1/4) turn as the joint is assembled; and

(f) Remove excess cement from the joint.

(2) To determine if a joint has been properly assembled, a small bead of cement shall appear at the junction between the pipe or tubing and the fitting.

Section 3. Installation Temperature. Extra care shall be taken if

# ADMINISTRATIVE REGISTER - 802

manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. If applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS  
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
	On models without built-in vacuum breakers:
Dental units	On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprin- kler or discharge outlet

Steam tables  
Tanks & vats

CL at least 12 in. above flood level  
CL at least 6 in. above flood level rim or  
line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine if they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. Potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment Lawn Sprinklers	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of USC CSA B.64.4 Sizes 3/4 " - 10"
(A) Double Check Valve Assembly	Two independent check valves.	All cross connect- ions subject to	Main Supply Lines Food Cookers	A.S.S.E. No. 1015 A.W.W.A. C506

# ADMINISTRATIVE REGISTER - 803

For low hazard cross connections.	Supplied with shutoff valves and ball type test cocks.	back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Tanks and Vats Commercial Pools	FCCCHR of USC CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants. N O X I C	A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure. Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Postmix Carbonated Beverage Machine	Special Approvals
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines	A.S.S.E. No. 1001 ANSI A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Laboratory Equipment Cooling Towers Comm. Laundry Mach. Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"
			Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

## CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

Degree of Hazard

Acceptable Protection

Backflow

Back siphonage

# ADMINISTRATIVE REGISTER - 804

Type of Connection	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
<b>I. Connections subject to back pressure from:</b>								
<b>A. Pumps, tanks, and lines handling:</b>								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
<b>B. Boilers</b>								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
<b>C. Gravity due to obvious site conditions subject to:</b>								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic subst.		X		X	X	X		
<b>II. Water outlets and connections not subject to back pressure:</b>								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X		Each case treated separately			
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
<b>G. Outlets with hose attachments subject to contamination from:</b>								
1. Toxic substances	X			X	X		X	X
2. Nontoxic subst.		X		X	X	X	X	X
<b>H. Outlets to recirculating cooling tower:</b>								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

Section 3. Water Required. (1) A building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A building shall not be less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures in the building.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be

separated by undisturbed or compacted earth except they may be placed in the same trench if:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

## ADMINISTRATIVE REGISTER - 805

(2) Piping which has been used for purposes other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. An outlet on the nonpotable water distribution system used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. The branches, fittings or valves shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that shall be permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

**Section 6. Water Supply to Fixtures.** Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valves shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage. These fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

**Section 7. Connections to Boilers.** Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

**Section 8. Water Supply to Drinking Fountains.** The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

**Section 9. Sizing of Water Supply Piping.** (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No more than three and one-half (3 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If mechanical shock absorbers are installed, they shall be in an accessible place.

(b) If mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

**Section 10. Water Supply Pipes and Fittings, Materials.** Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as ASTM B-586-73, fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as ASTM A-268-68, filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-69, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water only and ASTM F-877 for hot or cold water applications, copper tubing size PE produced and labeled as ASTM D-2737 for water service only if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85b with brass or copper fittings. Plastic pipe and fittings shall bear the NSF seal of approval. Polybutylene pipe utilizing insert fittings of brass or copper shall use only copper clamping rings. Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall be produced and labeled as ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or



machine drawn. If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction. Polyethylene or [-] PVC [or CPVC] shall not be used below ground under a house or building (refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature or pressure balance devices to prevent sudden unanticipated changes in water temperature shall be installed to serve all shower compartments and shower-bath combinations.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to other family units or portions of the building.

(4) In buildings other than dwellings, shutoff valves shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and lawn sprinkler openings shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or a group of fixtures shall be valved.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; if a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. The approval shall be obtained prior to.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent; and

(2) The heat exchanger is pretested by the manufacturer to 450 PSI; and

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES  
FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its

## ADMINISTRATIVE REGISTER - 807

pipng and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

**Section 20. Fire Protection Systems.** Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

**Section 21. Water Distribution and Connections to Mobile Homes.** (1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

**Section 22. Conservation of Water** (refer to 815 KAR 20:070).

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: September 13, 1995

FILED WITH LRC: September 14, 1995 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on Tuesday, October 24, 1995 at 10 a.m., local time, 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 October 19, 1995, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

### REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Some cost savings on installations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost

of doing business.

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

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect except to make more quality materials available.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different types of pipes are approved for different uses.

### CABINET FOR HUMAN RESOURCES Department for Social Insurance (Amendment)

#### 904 KAR 2:001. Definitions.

RELATES TO: KRS 205.710-205.800, 403.210-403.240, 405.520, 407.010-407.480, 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 15 USC 1673(b), 31 USC 7502  
STATUTORY AUTHORITY: KRS 194.050, 205.710-205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the Child Support Enforcement Program (CSEP). KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned

## ADMINISTRATIVE REGISTER - 808

with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program [CSEP].

Section 1. Definitions of terms utilized in administrative regulations relating to the Child Support Enforcement Program [CSEP] are as follows:

(1) "Absent parent" means either a mother or father of a dependent child who is not living in the home with the child. This term may also be used to describe the alleged father in a paternity case.

(2) "AFDC" means aid to families with dependent children.

(3) "Any other person or entity that may have standing to request a modification" means a nonparental client.

(4) [(3)] "Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by an absent parent.

(5) [(4)] "Assignment of rights" means the written transfer of rights to any child support, any medical support, or maintenance obligation to the state.

(6) [(5)] "Assigned support obligation" means any child support or medical support obligation assigned to the state.

(7) [(6)] "Authority to collect" means the nonpublic assistance client's authorization for the Cabinet for Human Resources to collect child support or maintenance owed on behalf of the family for whom the cabinet is providing child support services.

(8) [(7)] "Central registry" means a centralized office within the state agency responsible for:

(a) Receiving and distributing an incoming interstate request; and

(b) Responding to an inquiry received from another state regarding an interstate case.

(9) "CSEP" means the Child Support Enforcement Program.

(10) [(8)] "Default" means the absent parent's failure to return a financial statement or to keep an appointment, and the absent parent's income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.

(11) [(9)] "Dispute hearing" means the process whereby an absent parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.

(12) [(10)] "Distribution" means either a disbursement of collection to the family or an allotment of various portions of the collections to the state and federal government for the reimbursement of the share of the aid to families with dependent children [AFDC] assistance payment to the family or money expended for a child in foster care.

(13) [(11)] "Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence.

(14) [(12)] "Excess collections" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.

(15) [(13)] "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.

(16) [(14)] "Maintenance" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(17) [(15)] "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the absent parent of the child support and medical support obligation and of the absent parent's right to request a hearing.

(18) [(16)] "Obligor" means that individual who is ordered to pay child support, medical support, or health care coverage.

(19) [(17)] "Offset" means set aside federal or state, or both, income tax refunds due an absent parent as a means of collecting

past-due child support.

(20) [(18)] "Order to withhold earnings" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and when applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.

(21) [(19)] "Preoffset notice" means a letter notifying an absent parent who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, or state tax refund intercept only.

(22) [(20)] "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.

(23) [(21)] "Public assistance" means the receipt of aid to families with dependent children [(AFDC)], Medicaid, or foster care benefits.

(24) [(22)] "Responding state" means the state that is managing the child support case received from an initiating state.

(25) [(23)] "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Human Resources.

JOHN CLAYTON, Commissioner

MASTEN CHILDERS, Secretary

APPROVED BY AGENCY: September 14, 1995

FILED WITH LRC: September 15, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 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 October 18, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation clarifies terminology utilized within the Child Support Enforcement Program and related judicial and administrative actions. This is an expansion of materials previously promulgated. Definitions are being added in order to harmonize with statutory requirements and eliminate acronyms.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held on the NOI and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and the NOI and no public comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings:
  - 1. First year: None
  - 2. Continuing costs or savings: None
  - 3. Additional factors increasing or decreasing costs: None
  - (b) Reporting and paperwork requirements: None
  - (4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funding-66%; agency funding-34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held on the NOI and no public comments were received.

(b) Kentucky: No public hearing was held on the NOI and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because of the necessity to harmonize with statutory language.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The purpose of the regulation amendment is only for clarification of terminology.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 1993 Omnibus Reconciliation Act of 1993.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation identifies and defines terms utilized by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program and eliminates acronyms previously utilized.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation does not contain new services or new requirements, and therefore does not affect local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not affect local governments.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect

local governments.

#### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (Amendment)

#### 904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, PL 103-66, 7 USC 2012(g)

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Food Stamp Program.

Section 1. Definition of terms utilized in administrative regulations relating to the Food Stamp Program are as follows:

(1) "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 or unemployment of a parent.

(2) "Application for participation" means the form designed or approved by Food and Consumer Service (FCS) that is completed by:

(a) A household member; or

(b) An authorized representative.

(3) ~~[(2)]~~ "Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

~~[(3)]~~ "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

1. Making application for the program;

2. Obtaining the coupons; and

3. Using the coupons.

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

1. Has been designated in writing by:

a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency officials is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

a. A state agency employee who is involved in the certification or issuance processes;

b. A retailer that is authorized to accept food coupons; and

c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

1. Misrepresented a household's circumstances;

2. Knowingly provided false information pertaining to the household; or

3. Made improper use of coupons.

(5) [(4)] "Boarder":

(a) Means an individual to whom a household furnishes lodging and meals for reasonable compensation;

(b) "Reasonable compensation" is determined:

1. By considering only the amount paid for meals; and

2. Provided that the amount paid for meals is distinguishable from the amount paid for lodging.

(c) A reasonable monthly payment for meals shall be:

1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or

2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.

(d) A boarder is ineligible to participate in the program independent of the household providing the board.

(6) [(5)] "Certification" means the action necessary to determine eligibility of a household including:

(a) Interview;

(b) Verification; and

(c) Decision.

(7) [(6)] "Communal dining facility" means:

(a) A public or nonprofit private establishment, approved by FCS ~~[FNS]~~, that prepares and serves meals for elderly persons;

(b) A public or private nonprofit establishment (eating or otherwise) that feeds:

1. Elderly persons; and

2. SSI recipients and their spouses;

(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and

(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:

1. Elderly persons; and

2. SSI recipients and their spouses.

(8) [(7)] "Coupon" means:

(a) Any stamp;

(b) Coupon; or

(c) Type of certificate; that is

(d) Issued in accordance with the Food and Consumer ~~[Nutrition]~~ Service regulations for the purchase of eligible food.

(9) [(8)] "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(10) [(9)] "Disability" means:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;

2. Disability or blindness payments under:

a. 42 USC 301 to 306;

b. 42 USC 401 to 433;

c. 42 USC 1201 to 1206;

d. 42 USC 1351 to 1355; or

e. 42 USC 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits from a:

a. Federal;

b. State; or

c. Local governmental agency; and

d. Resulting from a disability considered payment under 42 USC 221(i);

5. Annuity payments under:

A. 45 USC 231(a); and

b. Is determined to qualify for Medicare by the Railroad Retirement Board; or

c. Has a disability based upon the criteria used under 42 USC 1381 to 1385; or

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration ~~[(VA)]~~ or paid as total (100 percent) by the Veteran's Administration ~~[(VA)]~~ under Title 38 of the United States Code;

(c) A veteran considered by the Veteran's Administration ~~[(VA)]~~ to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the Veteran's Administration ~~[(VA)]~~ to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the Veteran's Administration ~~[(VA)]~~ to be permanently incapable of self-support under Title 38;

(f) A surviving spouse or surviving child of a veteran and considered by the Veteran's Administration ~~[(VA)]~~ to be entitled to:

1. Compensation for a service-connected death;

2. Pension benefits for a nonservice-connected death under Title 38; and

3. Has a disability considered permanent under 42 USC 221(i);

(g) An individual in receipt of disability related medical assistance under 42 USC 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having his entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(11) [(10)] "Drug addiction or alcoholic treatment and rehabilitation program" means any:

(a) Drug addiction; or

(b) Alcoholic treatment and rehabilitation program;

(c) Conducted by:

1. A private nonprofit organization; or

2. Institution that is certified as responsible for the administration of the state's program for:

a. Alcoholics; or

b. Drug addicts; by

(i) The cabinet; or

(ii) Agencies designated by the Governor.

(12) [(11)] "Elderly" means an individual who is:

(a) Age sixty (60) or older; or

(b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application.

(13) [(12)] "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except:

1. Alcoholic beverages;

2. Tobacco;

3. Hot foods; and

4. Hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption by eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;

(d) Meals served by a communal dining facility for:

1. The elderly;

2. SSI households; or

3. To both; and

4. To households eligible to use coupons for communal dining;

(e) Meals prepared and served by an authorized drug addiction or alcoholic treatment and rehabilitation center to:

1. Narcotic addicts;

2. Alcoholics; and

3. Their children;

(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or have a disability as defined in subsection (9) of this section.

(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;

(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility be approved by the cabinet; and ~~shall:~~

1. ~~Be a nonprofit establishment;~~
2. ~~Be a licensed food service establishment; and~~
3. ~~Provide meals to the homeless;~~

(i) Meals prepared by a private establishment that contracts with the cabinet to be sold to homeless individuals at concessional prices.

(14) [(43)] "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4).

(a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 904 KAR 3:035, Section 5(3) and (4).

(b) The following are excluded household members and shall not participate as a separate household:

1. An ineligible alien;
2. An individual disqualified for failure to provide a social security number;
3. An individual disqualified for intentional program violation; or
4. An individual disqualified for failure to comply with work or workforce requirements.

(15) [(44)] "Employment and training (ET) program" means a program consisting of one (1) or more of the following components:

- (a) Work;
- (b) Training;
- (c) Education; or
- (d) Job search.

(16) [(45)] "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(17) "FCS" [(46) "FNS"] means the Food and Consumer [Nutrition] Service of the United States Department of Agriculture.

(18) [(47)] "Group living arrangement":

(a) Means a public or private nonprofit residential setting that:

1. Serves no more than sixteen (16) residents; and
2. Is appropriately certified.

(b) To be eligible, a resident shall be blind or have a disability as defined in subsection (9) of this section.

(19) [(48)] "Head of household" means the person in whose name the application for participation is made as:

- (a) Having primary financial responsibility for the household;
- (b) Being an adult parent of a child of any age and living in the household; or

(c) An adult having parental control over a child under the age of eighteen (18) and living in the household.

(20) [(49)] "Household" means:

- (a) An individual who:
  1. Lives alone; or
  2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or

(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

(c) The following individuals shall be treated as a group of individuals who customarily purchase food and prepare meals together for home consumption even if they do not do so:

1. Spouses who live together;
2. A parent and his child twenty-one (21) years of age or younger who live together, unless the child is:
  - a. Himself a parent and living with his child; or
  - b. Married and living with his spouse.
3. A child, excluding a foster child, under eighteen (18) years of age who lives with and is under parental control of a person other

than his parent, together with the person exercising parental control.

(d) Notwithstanding the preceding sentences, the following individual shall be considered, together with any of the others who is his spouse, an individual household, without regard to the purchase of food and preparation of meals, if the income as determined under 7 USC 2014(d) of the others, excluding the spouse, does not exceed the poverty line, as described in 7 USC 2014(c)(1) by more than sixty-five (65) per centum:

1. An individual who lives with others;
2. An individual who is sixty (60) years of age or older; and
3. An individual who is unable to purchase and prepare meals because he suffers, as certified by a licensed physician, from a:
  - a. Disability which would be considered a permanent disability under 42 USC 421(i); or
  - b. A severe, permanent and disabling physical or mental infirmity which is not symptomatic of a disease;

(e) In no event shall any:

1. Individual; or
2. Group of individuals;
3. Constitute a household if they reside in an:
  - a. Institution;
  - b. Boarding house; or
  - c. Live with others and pay compensation to the others for meals.

(f) The following shall not be considered a resident of an institution and shall be considered an individual household:

1. A resident of federally subsidized housing for the:
  - a. Elderly;
  - b. Persons with a disability or blind recipients of benefits as defined under subsection (9) of this section;
2. A resident in a public or private nonprofit group living arrangement that:

- a. Serves no more than sixteen (16) residents; and
- b. Is certified by the appropriate state agency or agencies under regulations under 42 USCA 1382e(e); or
- c. Is certified under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under this section;

3. A temporary resident of a public or private nonprofit shelter for battered women and children;

4. A resident of a public or private nonprofit shelter for individuals who:

- a. Do not reside in a permanent dwelling; or
- b. Have no fixed mailing address; and
- c. Are otherwise eligible for coupons; and
5. A narcotics addict or alcoholic who together with his child live under:

- a. The supervision of a private nonprofit institution; or
- b. A publicly operated community mental health center, for the purpose of regular participation in a drug or alcoholic treatment program.

(21) [(20)] "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(22) [(24)] "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(23) [(22)] "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

- (a) College;
- (b) University; and
- (c) Vocational or technical school.

(24) "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.

(25) [(23)] "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional

prices to an individual who is unable to adequately prepare his meals.

(a) A "meal delivery service participant" shall include:

1. An elderly person and his spouse;
2. The person who has a physical or mental disability; and
3. A person who otherwise has a disability and his spouse.

(b) The cabinet shall contract with any of the following "meal delivery service" providers:

1. A political subdivision;
2. A private nonprofit organization; or
3. A private establishment.

(26) [(24)] "Medicaid" means medical assistance under 42 USC 1396.

(27) [(25)] "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in an AFDC household, [public assistance (PA) household grant.]

(28) [(26)] "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(29) [(27)] "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.

(a) The following shall be considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:

1. Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.
2. Live-in-attendant. An individual who resides with a household to provide medical, housekeeping, child care or other similar personal services.
3. Other. Another individual who shares living quarters with the household but who does not customarily purchase food and prepare meals with the household.

(b) The following shall be considered as a nonhousehold member, ineligible to participate in the program as a separate household, and treated as described in 904 KAR 3:035:

1. An ineligible student;
2. A person disqualified for noncompliance with the work requirements;
3. A border;
4. A resident of an institution, except as provided in subsection (17) of this section;
5. A striker, unless:
  - a. The household was eligible the day prior to the strike; and
  - b. The household is eligible at the time of application;
6. A household disqualified due to voluntary quit provisions.

(30) [(28)] "Overissuance" means the amount by which coupons issued to a household exceeds the amount the household was eligible to receive.

(31) [(29)] "Public assistance" (PA) means any of the programs authorized under 42 USC 601 to 686 including:

- a. Old age assistance;
- b. Aid to families with dependent children (AFDC);
- c. Aid to the blind;
- d. Aid to the persons who have a permanent and total disability; and
- e. Aid to aged, blind or persons with a disability.

[(30)] "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(32) [(31)] "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(33) [(32)] "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(34) [(33)] "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(35) [(34)] "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101.

(36) [(35)] "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(37) [(36)] "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include:

(a) A stoppage by reason of expiration of a collective-bargaining agreement; and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is exempt from work registration for reasons other than employment; and
2. The exemption existed on the day prior to the strike.

(38) [(37)] "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

- (a) 42 USC 1381 to 1385 to the aged, blind and disabled;
- (b) 42 USC 1382e; or
- (c) 42 USC 1382.

(39) [(38)] "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);
2. A child six (6) through eight (8); and
3. A child nine (9) through eleven (11) years of age; and

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(40) [(39)] "Underissuance" means the amount that the allotment to that the household was entitled exceeds the allotment which the household received.

JOHN CLAYTON, Commissioner

MASTEN CHILDERS, Secretary

APPROVED BY AGENCY: September 14, 1995

FILED WITH LRC: September 15, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 23, 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 October 18, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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



## ADMINISTRATIVE REGISTER - 813

(1) Type and number of entities affected: This administrative regulation is promulgated to implement Section 1713 of PL 101-624 (7 USC 2012(g)). The provision amends the definition of "eligible foods" to allow private establishments to offer prepared meals to homeless individuals at concessional prices. All private establishments wanting to contract with the cabinet to accept food stamps must comply with 904 KAR 3:100 which is currently in process with the LRC. The cabinet has determined that this amendment to the administrative regulation will affect less than 1,000 individuals. The definitions for the acronyms will have no effect on regulated entities.

(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:

(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:

(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: Insignificant, in that applications will need to be sent to establishments wanting to enter into a contract.

(a) Direct and indirect cost or savings: Insignificant

1. First year: Insignificant

2. Continuing cost or savings: Insignificant

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Insignificant

(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:

(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:

(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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, federal and state statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

prescribed by the Food Stamp Act of 1977, as amended. There are no separate State compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with the Food Stamp Act of 1997, as amended 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 the Food and Consumer Service.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will no impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 101-624, Section 1713 (7 USC 2012(g)).

2. State compliance standards. This regulation pertains to definitions which are germane to the Food Stamp Program, as

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 1995

DEPARTMENT OF STATE  
Registry of Election Finance  
(New Administrative Regulation)

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

RELATES TO: KRS 121.140(4)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.140(4) provides for a hearing before a three (3) judge panel in cases in which the Registry of Election Finance and a respondent fail to reach a conciliation agreement. It is necessary to promulgate this administrative regulation to establish procedural guidelines to be followed in the initiation of those hearings, selection of judges to sit on the panels, and payment of per diem compensation and expenses of judges.

Section 1. Administrative Pleadings. (1) Upon the failure of the registry and the respondent to reach a conciliation agreement, and submission of a request for panelists as required by KRS 121.140(4), the general counsel shall prepare an administrative complaint which shall include the following:

(a) A statement of the allegations contained in the original complaint;

(b) The registry's findings of fact and conclusions of law in support of a finding of probable cause or the registry's notice of noncompliance with reporting requirements pursuant to 32 KAR 2:040(10);

(c) A statement that attempts to negotiate a conciliation agreement have been unsuccessful; and

(d) A statement that conciliation negotiations have been extended for the maximum period allowed by 32 KAR 2:050(3).

(2) The general counsel shall prepare an administrative subpoena which, along with a copy of the administrative complaint, shall be served upon the respondent either personally or by certified mail, return receipt requested. This notification shall be made in accordance with the schedule established by KRS 121.140(4).

(3) A respondent to an administrative complaint as provided in subsection (1) of this section shall have twenty (20) days from the date of receipt of the administrative subpoena and complaint to file a written response. The response shall be filed at the offices of the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(4) Within a reasonable time of the final selection of the three (3) panelists, the general counsel shall forward copies of the complaint to each member of the panel and shall, thereafter, forward copies of all other pleadings filed up to the dates of the hearing.

(5) The executive director shall randomly select a three (3) member panel to serve for a period of three (3) months.

Section 2. Retired or former justices or judges selected to serve on a three (3) judge panel shall receive \$300 per diem for the performance of their duties, and shall receive reimbursement for actual and necessary expenses.

JOSEPH TERRY, Chair

APPROVED BY AGENCY: June 19, 1995

FILED WITH LRC: August 22, 1995 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 30, 1995, at 9:30 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 25, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the

hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This proposed administrative regulation affects all respondents to cases in which conciliation efforts are unsuccessful.

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

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

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

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

1. First year following implementation: No reporting and paperwork requirements will result except those associated with the preparation and filing of pleadings before the panel.

2. Second and subsequent years: No reporting and paperwork requirements will result except those associated with the preparation and filing of pleadings before the panel.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for the registry will be those resulting from payment of per diem compensation and expenses of judges along with staff time.

2. Continuing costs or savings: Costs for the registry will be those resulting from payment of per diem compensation and expenses of judges along with staff time.

3. Additional factors increasing or decreasing costs: Costs to the agency will increase or decrease depending on the number of hearings held.

(b) Reporting and paperwork requirements: The only paperwork involved will be pleadings and communication between the parties.

(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: General fund agency appropriation.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the hearings themselves are required by law to be governed by the Rules of Civil Procedure and this administrative regulation will provide an efficient procedure for the initiation of hearings before the panel.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed administrative regulation if in conflict: None

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied because KRS 121.140 applies equally to all respondents before the registry.

**FINANCE AND ADMINISTRATION CABINET**  
Office of the Secretary  
(New Administrative Regulation)

**200 KAR 22:080. Comprehensive Employment Manual of the Kentucky Veterans Center 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 Kentucky Veterans Center for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Kentucky Veterans Center 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 at the Kentucky Veterans Center are set out in the "Employee Handbook of the Kentucky Veterans Center for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Kentucky Veterans Center for Use in the Pilot Personnel Program" as revised June 1995, ("Employee Handbook") is incorporated by reference.

(2) The "Employee Handbook" may be inspected, copied, or obtained from Bea Hood, Kentucky Veterans Center, 100 Veterans Drive, Wilmore, Kentucky 40390, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: September 15, 1995

FILED WITH LRC: September 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 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 October 26, 1995, five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing will be open to the public, and any person who attends

will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless it is requested in writing with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the public hearing, you may still submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gail Prewitt, Executive Assistant, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-4240.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Gail Prewitt, Executive Assistant

(1) Type and number of entities affected: This regulation will affect all employees at the Kentucky Veterans Center 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 Kentucky Veterans Center 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? Tiering was not applied. This regulation only applies to employees at the Kentucky Veterans Center who are participating in the Pilot Personnel Program.

#### TOURISM CABINET

Department of Fish and Wildlife Resources  
(New Administrative Regulation)

#### 301 KAR 6:050. Requirements for personal watercraft.

RELATES TO: KRS 235.010, 235.200, 235.280, 235.310, 235.320

STATUTORY AUTHORITY: KRS 235.280, 235.320

NECESSITY AND FUNCTION: To require certain safety equipment on, and prohibit unsafe operation of, personal watercraft.

Section 1. Definitions. (1) "Personal watercraft" means a boat which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than by the conventional method of sitting or standing inside the vessel.

(2) "Kill switch" means an emergency engine cut-off switch connected to the operator by a lanyard to shut off the engine if the operator is thrown from the vessel.

Section 2. Use of Personal Flotation Devices. Persons operating or riding as a passenger on personal watercraft shall wear a U. S. Coast Guard approved Type I, Type II, Type III or Type V personal flotation device.

Section 3. Kill Switches. (1) Persons shall not operate a personal watercraft that does not have a functioning kill switch.

(2) A person operating a personal watercraft shall have the kill

switch lanyard attached to his person.

Section 4. Hours of Operation. Persons shall not operate personal watercraft after sunset or before sunrise.

Section 5. Safe Operation of Personal Watercraft. Persons operating personal watercraft shall not:

(1) Operate at greater than idle speed in areas where skiing is prohibited.

(2) Weave through congested boating traffic.

(3) Jump the wake of another boat:

(a) Unreasonably close to the other boat; or

(b) When visibility around the other boat is restricted.

(4) Pass close enough to another boat to cast spray on the other vessel; or

(5) Engage in similar reckless practices which could endanger life, safety or property.

C. THOMAS BENNETT, Commissioner

GREG GINTER, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: September 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1995, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donovan Smith, Director, Division of Water Patrol, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3074.

#### REGULATORY IMPACT ANALYSIS

Contact Person:

(1) Type and number of entities affected: There are approximately 140,000 motorboats registered in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on either costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on the cost of doing business.

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

1. First year following implementation: This administrative regulation imposes no reporting or paperwork requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will create neither costs nor savings to the department.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This administrative regulation imposes no paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation should have no impact on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra expenses will be incurred to enforce this administrative regulation, since water patrol officers and conservation officers will enforce it in the regular course of their duties.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This administrative regulation should have no economic impacts on any geographical area.

(b) Kentucky: This administrative regulation will have no economic impacts on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of continuing to regulate personal watercraft under the administrative regulations which apply to all vessels was rejected because the nature of these craft and the ways in which they are operated call for special 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: This administrative regulation will increase public safety on Kentucky's waterways by mandating safety equipment and safe operating procedures for personal watercraft.

(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: There have been five fatalities to date in 1995 involving personal watercraft. This accident rate could increase as these craft become more popular. The detrimental effect of not implementing this administrative regulation would be increased potential for accidents involving personal watercraft on Kentucky's waters.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None have been identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)**

**401 KAR 50:031. Inherent physical limitations.**

RELATES TO: KRS 224.10-100, 224.20-120; 42 USC 7661-7661f, 401 KAR 50:035

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-120, 42 USC 7661-7661f

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes new criteria for determining major source status under Title V of the Clean Air Act Amendments of 1990.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Act" means the Clean Air Act promulgated at 42 USC 7401-7671q, as amended by PL 101-549 (November 15, 1990) and PL 102-187 (December 4, 1991).

(2) "Actual emissions" means the emissions of a regulated air pollutant from a stationary source during every twelve (12) month period. Actual emissions are determined using continuous emission monitoring data or source test data where available. In the absence of this or similar data, actual emissions are determined using throughputs of process materials and materials stored, usage of materials, manufacturer's product specifications, material VOC content reports or laboratory analyses, other information required by this and other applicable state and federal administrative regulations, and other information as requested in writing by the cabinet.

(3) "Classification date" means thirty (30) days after the date on which the U.S. EPA publishes a final rule granting full or interim approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661-7661f (Title V of the Act).

(4) "FESOP" or "federally-enforceable state operating permit" means a permit issued by the cabinet which limits a source's potential to emit below the thresholds which require a source to obtain a Part 70 permit, and which is made federally-enforceable.

(5) "HAP" or "hazardous air pollutant" means a pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act).

(6) "Inherent physical limitation" means a condition that is inherent in the physical design or operation of a source which limits its potential to emit. Inherent physical limitations are not required to be federally-enforceable.

(7) "Major source" means a source that emits or may emit a regulated air pollutant and which is described in paragraph (a), (b), or (c) of this subsection.

(a) A source that directly emits or has the potential to emit 100 tons per year or more of a regulated air pollutant that is not a HAP. Fugitive emissions shall be considered in determining if the source is a major source only if the source belongs to one (1) of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
27. All other stationary source categories subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7412 (Section 112 of the Act).

(b) On or after the classification date, a source that directly emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a HAP, or twenty-five (25) tons per year or more of a combination of HAPs, or a lesser quantity of HAPs which the U.S. EPA has established by rule. All fugitive emissions of HAPs shall be considered in determining if the source is a major source. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units comprise a source as defined in subsection (13) of this section, to determine whether the units or stations are major sources.

(c) A major stationary source as defined in 42 USC 7501 to 7515 (Part D of the Act) including:

1. For ozone nonattainment areas, sources with the potential to emit fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," or ten (10) tons per year or more in areas classified as "extreme;"
2. For carbon monoxide nonattainment areas that are classified as "serious," sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and
3. For particulate matter (PM<sub>10</sub>) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM<sub>10</sub>.

(8) "Minor source" means a source whose potential to emit is less than the thresholds for a major source as defined in subsection (7) of this section.

(9) "Part 70 permit" means an operating permit issued to a source pursuant to a Title V program approved by the U.S. EPA.

(10) "Process statement" means an annual emissions report certified by the owner or operator of a source which provides the following: throughputs of process materials and materials stored, usage of materials, fuel usage, available continuous emissions monitoring data, hours of operation, and other information requested in writing by the cabinet.

(11) "PTE" or "potential to emit" means the maximum capacity of a source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally-enforceable.

(12) "Regulated air pollutant" means the following:

(a) Volatile organic compounds (VOCs) and oxides of nitrogen;

(b) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);

(c) A Class I or Class II ozone-depleting substance subject to a standard promulgated pursuant to 42 USC 7671-7671q (Title VI of the Act);

(d) A pollutant subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act); or

(e) A pollutant subject to a standard or requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act), as provided below:

1. A pollutant listed pursuant to 42 USC 7412(r) (Section 112(r) of the Act) shall be considered regulated upon promulgation of the list.

2. A HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to 42 USC 7412(d) (Section 112(d) of the Act) or adopted by the cabinet pursuant to 42 USC 7412(g) and (j) (Section 112(g) and (j) of the Act) shall be considered regulated for all sources or categories of sources upon promulgation of the standard or requirement, or eighteen (18) months after the standard or requirement was scheduled to be promulgated pursuant to 42 USC 7412(e)(3) (Section 112(e)(3) of the Act), whichever date is sooner.

3. A HAP for which the cabinet has made a case-by-case emission limitation determination pursuant to 42 USC 7412(g)(2) (Section 112(g)(2) of the Act) shall be considered regulated, but only for the source for which the determination was made.

(13) "Source" means a stationary source, or a group of stationary sources, that are located on one (1) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping (i.e., all have the same two (2) digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21), and which emits or may emit a regulated air pollutant.

(14) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.

(15) "State-origin permit" means a permit that contains only state-enforceable requirements, or that contains federally-enforceable requirements but is not required by the U.S. EPA to be a federally-enforceable permit.

(16) "Twelve (12) month period" means a period of twelve (12) consecutive months determined on a rolling basis with a new twelve (12) month period beginning on the first day of each calendar month.

Section 2. Applicability. (1) This administrative regulation shall apply to any source:

(a) Whose PTE equals or exceeds the major source thresholds provided in Section 1(7)(a), (b), or (c) of this administrative regulation; and

(b) That has operated continuously for at least one (1) twelve (12) month period beginning twenty-four (24) months immediately preceding the effective date of this administrative regulation; and

(c) Whose actual emissions beginning twenty-four (24) months immediately preceding the effective date of this administrative regulation and continuing thereafter do not exceed the values shown below:

1. Fifty (50) tons per year of a regulated air pollutant (excluding HAPs);

2. Five (5) tons per year of a single HAP;

3. Twelve and a half (12.5) tons per year of any combination of HAPs; and

4. Fifty (50) percent of a lesser threshold for a single HAP that the U.S. EPA may establish by rule.

(2) A source that has applied for a Part 70 permit or a FESOP shall not be subject to this administrative regulation unless the owner or operator of the source voluntarily withdraws the application.

(3) A source that has received a Part 70 permit or a FESOP shall

not be subject to this administrative regulation unless the permit has expired and the owner or operator does not apply for renewal.

(4) Nothing in this administrative regulation shall prevent a source from applying for or receiving a Part 70 permit or a FESOP in lieu of complying with this administrative regulation.

(5) Nothing in this administrative regulation shall relieve a source from the obligation to:

(a) Obtain a Part 70 permit or a FESOP if required to do so for any reason other than its status as a major source under 42 USC 7661-7661f (Title V of the Act);

(b) Obtain a state-origin permit or other type of permit if required to do so pursuant to 401 KAR 50:035; or

(c) Operate in compliance with all applicable state and federal requirements.

**Section 3. General Provision.** The cabinet has determined that a source subject to this administrative regulation has an inherent physical limitation which prevents it from becoming a major source pursuant to 42 USC 7661-7661f (Title V of the Act). These sources shall be classified as minor sources and shall be deferred from the obligation to obtain a Part 70 permit or a FESOP until twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit, or within five (5) years after the classification date, whichever date is earlier.

**Section 4. Notification, Compliance, and Enforcement.** (1) The owner or operator of a source shall notify the cabinet within sixty (60) days after the source becomes subject to this administrative regulation. The notification shall state that the source is subject to this administrative regulation, and shall include a certified process statement demonstrating that the source complies with the requirements in Section 2(1) of this administrative regulation. The source shall begin complying with the recordkeeping and reporting requirements in Sections 5 and 6 of this administrative regulation immediately upon notification to the cabinet.

(2) A source that is subject to this administrative regulation and fails to comply with the notification, recordkeeping, and reporting requirements in subsection (1) of this section shall be in violation of this administrative regulation and shall be subject to enforcement action. If the source fails to comply with these requirements within thirty (30) days after notice of violation is provided by the cabinet, it shall no longer be subject to this administrative regulation and shall be required to submit an application pursuant to 401 KAR 50:035 for a Part 70 permit or a FESOP.

(3) A source whose actual emissions exceed the values given in Section 2(1) of this administrative regulation, or who is required to obtain a permit for noncompliance pursuant to subsection (2) of this section, shall submit an application to the cabinet for a Part 70 permit or a FESOP within six (6) months after:

(a) The exceedance occurs; or

(b) The source is notified that it must obtain a permit.

(4) A source that is required to obtain a Part 70 permit or a FESOP pursuant to subsection (3) of this section shall not become subject to this administrative regulation again until the Part 70 permit or FESOP has expired and the source has demonstrated its ability to comply with all the provisions of this administrative regulation.

**Section 5. Recordkeeping Requirements.** (1) The owner or operator shall keep and maintain the records prescribed in subsection (2) of this section unless the actual emissions of the source do not exceed the values shown below:

(a) Five (5) tons per year of a regulated air pollutant (excluding HAPs);

(b) One (1) ton per year of a single HAP;

(c) Two and a half (2.5) tons per year of any combination of HAPs; and

(d) Ten (10) percent of any lesser threshold for a single HAP that

the U.S. EPA may establish by rule.

(2) The owner or operator shall keep and maintain records for each emission unit sufficient to determine actual emissions. In the case of groups of similar units connected in series, records may be kept on the group rather than on each individual unit (e.g., a series of spray booths with a common feed, or internal combustion engines in an oil field fed by a common fuel line). These records shall be summarized in a monthly log, maintained on site for five (5) years, and made available for inspection by the cabinet or the U.S. EPA on request.

(a) Coating or solvent emission unit. Owners or operators of sources that contain a coating or solvent emission unit or that use a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: information on the manufacturer, brand, product name or CAS number, VOC content in grams per liter or pounds per gallon, HAPs content in grams per liter or pounds per gallon, or manufacturer's product specifications, material VOC content reports or laboratory analyses providing this information;

2. A description of all equipment used during and after coating or solvent application, including type, make and model; maximum design process rate or throughput; type and description of control devices used; and a description of the application method and drying method used;

3. A monthly log of the consumption of each solvent, including solvents used in purging, clean-up, and surface preparation, and of each coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(b) Organic liquid storage unit. Owners or operators of sources containing a permitted organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(c) Combustion emission unit. Owners or operators of sources containing combustion emission units shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input and output, minimum operating temperature and capacity of thermal oxidizers, type and description of control devices used, and all source test information; and

2. A monthly log of hours of operation, fuel type, fuel usage, fuel heating value, and percent sulfur for fuel oil and coal. For nonfossil fuels, heating value shall be expressed in BTU/lb or BTU/gal.

(d) Emission control unit. Owners or operators of sources containing emission control units shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control unit;

2. Information on equipment design including where applicable, pollutants controlled; control efficiency; maximum design or rated capacity; inlet and outlet temperatures, and concentrations for each pollutant controlled; catalyst data (type, material, life, volume, space velocity, ammonia injection rate and temperature); baghouse data (design cleaning method, fabric material, flow rate, air-to-cloth ratio); electrostatic precipitator data (number of fields, cleaning method, and power input); scrubber data (type, design, sorbent type, pressure drop); other design data as appropriate; all source test information; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

(e) General emissions unit. Owners or operators of sources



containing emission units not described in paragraphs (a) through (c) of this subsection shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model, maximum design process rate or throughput, and type and description of control devices used;
2. A monthly log of operating hours, each raw material used and its amount, each product produced and its production rate;
3. Purchase orders, invoices, and other documents to support information in the monthly log; and
4. Any additional information requested in writing by the cabinet.

Section 6. Reporting Requirements. The owner or operator of a source shall submit a certified process statement to the cabinet each year on the anniversary of the notification date provided in Section 4(1) of this administrative regulation, unless the actual emissions of the source do not exceed the values shown below:

- (1) Twenty-five (25) tons per year of a regulated air pollutant (excluding HAPs);
- (2) Two and a half (2.5) tons per year of a single HAP;
- (3) Six and a quarter (6.25) tons per year of any combination of HAPs; and
- (4) Twenty-five (25) percent of any lesser threshold for a single HAP as the U.S. EPA may establish by rule.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: September 14, 1995

FILED WITH LRC: September 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the new administrative regulation will be conducted on October 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 establishes new criteria for determining if a source is major under Title V and, therefore, if it must obtain a Title V permit or a FESOP (federally-enforceable state operating permit) which limits its potential emissions below the major source thresholds. Essentially, the regulation declares that any source whose potential emissions are at or above the major source thresholds but whose actual emissions are consistently less than half that amount has an inherent physical limitation on its potential to emit which will likely prevent it from ever becoming a major source. Using only the criteria currently provided in the state air permitting regulation, 401 KAR 50:035, the division estimates that approximately 470 sources in Kentucky will have to apply for a Title V permit or a FESOP by December, 1996, and the division must review and issue these permits by December, 2000. The effect of this administrative regulation, if adopted, would be to reduce number of sources required to obtain a new permit from 470 to approximately 200. Additionally, the number of existing permits that must be examined by division personnel to verify their applicability under Title V will be reduced from more than 2200 to approximately 70.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There is no appreciable effect on the cost of living or employment in the geographic areas where the affected sources are located as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. There will be a positive effect on the cost of doing business for those sources that are affected by this administrative regulation, since they will not be required to submit an application for a Title V permit or a FESOP, or to comply with the monitoring, recordkeeping, and reporting requirements for Title V permit holders.

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

1. First year following implementation: Industry consultants have estimated that it will require a man-month to a man-year, depending on the size and complexity of the source, just to prepare a complete application for a Title V permit or a FESOP. For most sources that require these permits, this process must be repeated every five years or less. Sources that require a Title V permit will have the added expense of periodic or continuous monitoring, recordkeeping, and frequent reporting to the cabinet. Under the schedule currently proposed by the U.S. EPA, Kentucky's Title V program will become effective in December, 1995, and all applications will be due no later than December, 1996. The major savings to the regulated community will accrue during this period to those 270 sources that will otherwise be required to prepare and submit a complete application.

2. Second and subsequent years: Of the 270 sources which the division estimates will be affected by this rule, approximately 50 would require a Title V permit under the current rule. The other 220 would require a FESOP. The 50 sources that would have required a Title V permit will benefit in subsequent years by not having to comply with the monitoring, recordkeeping, and reporting requirements under Title V. In addition, all 270 sources will benefit from the reduced paperwork in preparing applications during each subsequent 5-year renewal, unless the U.S. EPA decides to end the deferment of minor sources and requires some or all of these sources to obtain a permit.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will accrue no significant costs or savings from this proposed administrative regulation during the first year.

2. Continuing costs or savings: The major savings to the Division for Air Quality will occur during the second year after adoption of the regulation. The division anticipated receipt of over three hundred FESOP applications during that year from sources seeking to avoid the requirement to obtain a Part 70 (Title V) operating permit. The division will use the time saved to devote additional time to permits from larger sources and to reduce the time needed to issue permits. The recordkeeping and reporting requirements of this proposed administrative regulation will increase the workload experienced by the Field Operations and Enforcement Branches of the division during 1996, but will be handled using existing resources.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues. It will have no effect on the number of sources that are "subject to Title V" nor on the annual emission fees collected from those sources. It will only affect the type of permit that many of these sources will have to obtain.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's current

operating budget is sufficient 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 a positive economic impact on the affected sources, as noted in (2)(b).

(b) Kentucky: This administrative regulation will be implemented statewide, and will affect approximately 270 sources located throughout Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The division considered adopting no inherent physical limit rule, and adopting an inherent physical limit rule applying only to sources having actual emissions less than 20% of the major source thresholds. The division rejected both of these alternatives because they would have required that substantially larger numbers of sources obtain a FESOP or apply for a Part 70 permit by December 1996 with no apparent benefit to the environment or to the ability of the division to safeguard or improve air quality. The division also considered percentages above 50%, but rejected those because of the increasing likelihood that actual emissions by sources subject to the regulation would exceed major source thresholds.

(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 should have a positive effect on the public health and environment in Kentucky, since it will enable division staff to concentrate more fully on those sources which emit 97% of all air pollution.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Please see (8)(a) above.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(a) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation. It does not amend the definitions for "major source" and "potential to emit" contained in our existing regulations, but expands the concept of inherent physical limitations on a source's potential to emit.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? Yes. The effect of this administrative regulation will be to defer approximately 270 small sources, which typically emit less than 3% of Kentucky's air pollution, from having to obtain a Title V permit or a FESOP.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the

administrative regulation.

Revenues (+/-): There is no known effect on current or future revenues.

Expenditures (+/-): There is an effect on both current and future expenditures. If this administrative regulation is not adopted, staffing increases will be needed now so that new personnel can be trained and capable of handling the added workload that will begin in 1996 and 1997.

Other Explanation: There is no further explanation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for states to develop and implement an operating permit program and to issue federally-enforceable operating permits to major sources is contained in 42 USC 7401-7671q (Title V of the Act) and 40 CFR Part 70 as promulgated by the U.S. EPA in the Federal Register on July 21, 1992, 57 FR 32250.

2. State compliance standards. The program requirements mandated by Title V of the Act and 40 CFR Part 70 were first promulgated in amendments to 401 KAR 50:035, Kentucky's air permitting regulation. The new requirements became effective on November 29, 1993, and were later amended on September 28, 1994.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR Part 70 and 401 KAR 50:035 require that all major sources obtain a Title V permit or a FESOP within a specified time frame after the state's program is approved. This administrative regulation redefines sources that will be considered major in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The standards, requirements and responsibilities imposed on major sources in Kentucky will be no different from those imposed in the federal mandate, but fewer sources will be subject to those standards and requirements as a result of this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justification for deferring small sources from the requirement to obtain a Title V permit or a FESOP is that neither Congress or the U.S. EPA ever intended to burden small sources with Title V, and this allows the cabinet to focus its resources on those sources that emit the bulk of our air pollution.

#### TRANSPORTATION CABINET Department of Administrative Services Division of Fleet Management Division of Purchases (New Administrative Regulation)

**600 KAR 1:120. Purchase, use, lease, maintenance and disposal of state-owned motor vehicles.**

RELATES TO: KRS 44.045, 186.065, Executive Order 93-560  
STATUTORY AUTHORITY: Executive Order 93-560

NECESSITY AND FUNCTION: In order to assure the most effective utilization of state-owned vehicles, this administrative regulation establishes procedures governing the purchase, licensure, use, lease, maintenance, and disposal of state-owned vehicles.

Section 1. Definitions. (1) "Agency specific motor pool" means the fleet of passenger carrying motor vehicles owned, operated, and maintained by a state agency other than the Transportation Cabinet.

(2) "Exempt vehicle" means a motor vehicle that is not part of the statewide motor pool.

(3) "Motor vehicle" means as defined in KRS 281.011(2).

(4) "Nonexempt vehicle" means a motor vehicle under the control of the statewide motor pool.

(5) "Passenger carrying vehicle" means a motor vehicle whose primary purpose is to transport people.

(6) "Statewide motor pool" means the fleet of passenger carrying motor vehicles operated, controlled, and maintained by the Transportation Cabinet's Division of Fleet Management.

Section 2. General. (1)(a) This administrative regulation is applicable to all executive branch state agencies in regard to the purchase, licensure, use, lease, maintenance and disposal of all motor vehicles.

(b) This administrative regulation is applicable to all legislative or judicial branch state agencies in regard to the use, lease, and maintenance of nonexempt motor vehicles.

(2) The Transportation Cabinet shall establish a statewide motor pool of vehicles for the purpose of providing safe, reasonably priced, necessary and essential vehicular transportation for all cabinets, agencies or entities of any kind in state government. This fleet shall be made available for lease by any state agency.

(3)(a) The Secretary of the Governor's Executive Cabinet may, upon written justification from an agency head, authorize the establishment of an agency-specific motor pool.

(b) An agency specific motor pool shall provide a similar service level at costs less than or equal to the costs the Transportation Cabinet could provide comparable services.

(c) An agency with authority delegated pursuant to this subsection shall submit cost effectiveness and inventory reports to the Transportation Cabinet on an annual basis or as requested.

(d) The establishment of an agency-specific motor pool shall not exempt the agency from the provisions of this administrative regulation.

(4) The state-supported universities and the Department of State Police shall be exempt from the provisions of this administrative regulation except for Section 3(2) of this administrative regulation.

(5) A nonpassenger carrying motor vehicle with a weight rating greater than three-fourths (3/4) ton shall be exempt from the statewide motor pool.

Section 3. Vehicle Identification. (1) The Transportation Cabinet shall have inventory responsibility for all state-owned motor vehicles.

(2) A state agency controlling an exempt vehicle shall submit annual inventory reports to the Transportation Cabinet.

(3)(a) At the time of its purchase a nonexempt motor vehicle shall be delivered to the Transportation Cabinet in Frankfort, where licensing, identification and other required markings shall be performed.

(b) When purchased an exempt vehicle may be delivered to a location determined by the agency head.

Section 4. Purchase of Motor Vehicles. (1) Price contracts for the purchase of motor vehicles shall be established by the Finance and Administration Cabinet, Division of Purchases.

(2)(a) The Transportation Cabinet shall approve the purchase of all motor vehicles, except those exempted by the provisions of Section 2(4) of this administrative regulation. Any other state agency desiring to purchase a motor vehicle shall submit a written request to the Transportation Cabinet.

(b) The request shall include the following:

1. Name of the requesting agency;
2. Description of the requested vehicle;
3. Intended use of the vehicle;
4. Number of vehicles requested;
5. Estimated annual vehicle mileage;
6. Whether the vehicle is a replacement or a program expansion;
7. Source of funds for the purchase;

8. If funding for the vehicle was approved in the budget;

9. If the vehicle will be assigned to a motor pool, and if not, an explanation of its planned uses; and

10. The name, address, telephone number, and signature of the person in the agency authorized to request the purchase.

(3) The Transportation Cabinet shall consider for replacement all motor vehicles which are five (5) years old, or which have been driven 90,000 miles. Other motor vehicles may be considered for replacement if the Transportation Cabinet finds them to be inoperable, unsafe, or if the Transportation Cabinet determines that they require extensive repair which would not be economically feasible.

(4) The Transportation Cabinet shall submit a monthly status report to the Governor's Office of Policy and Management that summarizes the vehicle purchases authorized and the impact they have on the motor pool.

(5) Exempt agencies shall submit a purchase document with a copy of vehicle purchase approval from the Transportation Cabinet to the Finance and Administration Cabinet, Division of Purchases for processing.

(6) The Transportation Cabinet shall purchase vehicles used by the cabinet which are not ordered from a price contract, including heavy roadway equipment and other exempt vehicles.

Section 5. Use of Motor Vehicles. (1)(a) Motor vehicles shall be used only in the performance of the official business of the Commonwealth.

(b) It shall be the responsibility of each agency head to ascertain that state-owned motor vehicles are used only for official purposes and he shall insure that the use of these vehicles is not abused.

(c) The Transportation Cabinet has adopted in 600 KAR 1:070 operating procedures to govern the use of vehicles assigned to the statewide motor pool.

(2)(a) State-owned motor vehicles shall not be assigned to specific officials except where, in the judgment of the Secretary of the Governor's Executive Cabinet, exclusive use by a specific individual is not only in the best interests of the Commonwealth, but is necessary.

(b) The assignment of a state-owned motor vehicle to a specific individual may be made only after written approval by the Secretary of the Governor's Executive Cabinet.

(c) The request for permanent assignment shall set forth the reasons why the assignment is necessary and in the best interests of the Commonwealth.

(d) If the vehicle is to be parked at a private residence, the request shall include significant justification for this action.

(3) Before a motor vehicle may be used by a state agency, it shall be marked in accordance with the provisions of KRS 186.065.

Section 6. Licensure of Motor Vehicles. (1) All state-owned motor vehicles shall bear official license tags except those vehicles specified as exempt from this requirement in KRS 186.065.

(2)(a) A request to license a state-owned motor vehicle with a nonofficial license plate pursuant to the provisions of KRS 186.020 shall be submitted to the Secretary of Governor's Executive Cabinet by the head of the agency involved, and shall set forth the investigatory purposes for which the vehicle is to be used.

(b) It shall be the responsibility of the agency head to ascertain that the vehicle is used only for investigatory purposes and he shall insure that the use of the vehicle is not abused.

(3) An official license plate attached to a motor vehicle which is being replaced shall be turned in to the Transportation Cabinet.

(4) The Transportation Cabinet shall be responsible for the licensing and titling of all nonexempt vehicles.

Section 7. Lease of Motor Vehicles from Statewide Motor Pool.

(1) The fleet of vehicles in the statewide motor pool shall be available for use to all state agencies for official business of the Common-

wealth. These vehicles shall be made available for a lease to all state agencies.

(2)(a) Requests to use motor vehicles available in the statewide motor pool shall be submitted to the Transportation Cabinet on the forms and in the manner prescribed in 600 KAR 1:070.

(b) Billing shall be performed by the Transportation Cabinet and necessary documentation shall be provided to each user agency.

(c) The Transportation Cabinet has adopted the procedures to govern the operation of the statewide motor pool in 600 KAR 1:070.

(3) An agency shall not lease a motor vehicle from a private individual or business without prior written approval of the Secretary of the Governor's Executive Cabinet.

**Section 8. Maintenance of Motor Vehicles.** (1) It shall be the responsibility of the agency to which a motor vehicle from the statewide motor pool has been permanently assigned to maintain it properly and in accordance with the manufacturer's instructions.

(2)(a) Nonexempt motor vehicle repair/maintenance shall be the responsibility of the Transportation Cabinet.

(b) The cabinet shall repair/maintain vehicles in the most economical means possible.

(3) A record of maintenance history and costs for each exempt motor vehicle shall be kept by each agency and submitted to the Transportation Cabinet on an annual basis or as requested.

**Section 9. Disposal of Motor Vehicles.** (1) An agency may advise the Transportation Cabinet of its desire to dispose of a motor vehicle which meets at least one (1) of the following criteria:

(a) Is at least five (5) years old;

(b) Has been driven at least 90,000 miles; or

(c) Is inoperable, unsafe, or in need of substantial repair.

(2) All proceeds from the sale of nonexempt surplus motor vehicles shall be deposited into the Transportation Cabinet motor pool agency fund except where federal law or regulations, or state law or administrative regulations, preclude this deposit.

(3) The disposal of an exempt motor vehicle shall be the responsibility of each individual agency. The Transportation Cabinet shall be immediately notified of the disposal of an exempt vehicle for inventory control purposes.

JON D. CLARK, Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 15, 1995

FILED WITH LRC: September 15, 1995 at noon

**PUBLIC HEARING:** A public comment hearing on this administrative regulation will be held on October 27, 1995 at 9 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by October 22, 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 October 22, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on October 27, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

## REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All state agencies which participate in the statewide motor pool or use state motor vehicles.

(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 comment hearing was held on the notice of intent. However, no impacts on the cost of living or employment are expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment hearing was held on the notice of intent. However, no impacts on the cost of doing business are expected.

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

1. First year following implementation: Each agency must submit monthly vehicle inventory reports to the Transportation Cabinet. In addition, they must request, in writing, permission to purchase a new motor vehicle or to operate one without the state seal and official license plate.

2. Second and subsequent years: Same.

(3) Effects on the promulgating administrative 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: Monthly vehicle inventory reports.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Motor pool agency 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation provides the best oversight of state-owned motor vehicles. Governor Jones chose to consolidate control of the fleet of state-owned motor vehicles when it became apparent that no one had a clear understanding of the total impact of the state-owned motor vehicles.

(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: KRS 44.045; 200 KAR 5:010.

(a) Necessity of proposed regulation if in conflict: Compliance with Executive Order 93-560 which relates to the reorganization of the statewide motor pool.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes. The Finance and Administration Cabinet will repeal its administrative regulation in the near future and is including a change to KRS 44.045 in its legislative package for 1996.

(10) Any additional information or comments: The need for this administrative regulation was prompted by Governor Jones' Executive

## ADMINISTRATIVE REGISTER - 824

Order 93-560 which severely limited the use of state-owned motor vehicles and required an accounting of all use.

(11) TIERING: Is tiering applied? Yes. There are different requirements for motor vehicles which are part of the statewide motor pool from those which are exempt. (Explain why tiering was or was not used)

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing (New Administrative Regulation)

#### 601 KAR 9:220. Motor vehicle dealer plates.

RELATES TO: KRS Chapters 186, 190

STATUTORY AUTHORITY: KRS 186.070

NECESSITY AND FUNCTION: To establish the criteria for the issuance and use of a motor vehicle dealer plate and to provide for the cancellation of a dealer plate for misuse of the plate.

Section 1. Definitions. (1) "Bona fide salesman or employee" means as defined in KRS 186.070(1)(e).

(2) "Commission" means the Kentucky Motor Vehicle Commission.

(3) "Commissioner" means the Commissioner of the Department of Vehicle Regulation or his designee.

(4) "Demonstration trip" means a temporary use of a vehicle by a single prospective customer or his employee for a reasonable evaluative purpose incidental to the sale of the vehicle.

(5) "Dealer plate" means any base plate or supplemental plate issued pursuant to KRS 186.070.

(6) "Licensed motor vehicle dealer" means a motor vehicle dealer as defined in KRS 190.010 and licensed by the commission pursuant to the provisions of KRS Chapter 190.

(7) "Misuse" means use of a dealer plate in a manner unauthorized by KRS 186.070 or Section 3 of this administrative regulation.

Section 2. Issuance of Dealer Plates. (1) Effective with the issuance of dealer plates for the licensing period beginning January 1, 1996, the maximum number of dealer plates which may be issued to a licensed motor vehicle dealer who has been licensed for an uninterrupted period beginning on or prior to January 1, 1994, shall be based upon the total number of that dealer's vehicle sales for the period from July through the following June immediately preceding the date of the report of the information on vehicle sales by the dealer to the commission.

(2)(a) For a motor vehicle dealer licensed after January 1, 1994, beginning on the first day of January following an uninterrupted eighteen (18) month licensing period from the date of the first issuance of the dealer's license by the commission, the number of dealer plates issued shall depend upon the number of that dealer's vehicle sales for the period from July through the following June preceding the date of the report of the information by the dealer to the commission.

(b) A motor vehicle dealer licensed for less than eighteen (18) uninterrupted months may apply for any number of dealer plates.

(3) The maximum number of dealer plates issued to a motor vehicle dealer shall be as follows:

(a) Ten (10) or fewer vehicle sales - one (1) dealer plate;

(b) Eleven (11) through twenty-five (25) vehicle sales - two (2) dealer plates;

(c) Twenty-six (26) through fifty (50) vehicle sales - three (3) dealer plates;

(d) Fifty-one (51) through seventy-five (75) vehicle sales - four (4) dealer plates;

(e) Seventy-six (76) through 100 vehicle sales - five (5) dealer

plates; and

(f) For more than 100 vehicle sales, the number of dealer plates issued shall be as requested by the dealer.

(4) Upon recommendation by the commission to the commissioner, and for good cause shown, a dealer who is restricted in the number of plates issued based upon his sales figures may receive an additional plate or plates.

(5)(a) The information on vehicle sales shall be provided by the commission to the Transportation Cabinet.

(b) The Transportation Cabinet shall cause the information to be entered into the automated vehicle information system.

Section 3. Use of Dealer Plates. (1) Use of a motor vehicle bearing a dealer plate upon the highways by a licensed dealer or bona fide salesman of the dealer shall consist of the use of the motor vehicle upon the highways at any time with the intent of offering or advertising the vehicle for sale to the public.

(2) A bona fide employee of the dealer who is not a licensed salesman shall only operate a motor vehicle bearing a dealer plate:

(a) When testing the mechanical operation of the vehicle;

(b) When transporting vehicles to or from the dealer's place of business; or

(c) For the necessary operation in furtherance of the dealer's business during the dealer's business hours.

(3) A bona fide employee of the dealer who is not a licensed salesman shall not operate the vehicle for personal purposes or in demonstration or advertising to a prospective customer.

(4) A prospective customer, who is operating upon the highways a motor vehicle bearing a dealer plate, shall be limited to one (1) demonstration trip unless he is accompanied by the licensed dealer to whom the dealer's plate was issued or a licensed salesman of the dealer.

Section 4. Cancellation of Dealer Plates Upon Misuse. (1) A final order issued by the commission finding misuse of a dealer plate shall be forwarded to the commissioner.

(2) Upon receipt of the commission's final order, if no appeal from the commission's final order has been filed, and the time for taking an appeal has expired, or, if an appeal has been filed, after a ruling has been entered upholding the finding of the commission, the commissioner shall cause the dealer plate involved in the misuse to be canceled.

NORRIS BECKLEY, Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 14, 1995

FILED WITH LRC: September 15, 1995 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 27, 1995 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by October 22, 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 October 22, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on October 27, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G.

## ADMINISTRATIVE REGISTER - 825

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: 3400 motor vehicle dealers licensed to do business 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: A public comment hearing was not held, but no impact is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment hearing was held, but no impact is anticipated.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Transportation Cabinet and the Motor Vehicle Commission will have to exchange data on a routine basis, but no cost or savings is anticipated.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet and the Motor Vehicle Commission will have to exchange data.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road Fund and fees imposed on motor vehicle dealers by the Motor Vehicle Commission.

(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 public comment hearing was not held, but no impact is anticipated.

(b) Kentucky: A public comment hearing was not held, but no impact is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This tiering of the number of plates a motor vehicle dealer can purchase was related to his annual motor vehicle sales because that is the way it was presented to the 1994 General Assembly during the discussion of the changes to KRS 186.070. In-state manufacturers and in-state component manufacturers were not included in the administrative regulation because there are only 5 total licensed in Kentucky. They hold just over 1% of the dealer plates issued. However, in the past 10 years, no cases of plate misuse have been brought against a manufacturer or component manufacturer. All of the reported abuse of dealer plates has been against licensed dealers.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Section 4 of this administrative regulation, KRS 186.070(4) and KRS Chapter 190 conflict with KRS 186.070(3).

(a) Necessity of proposed regulation if in conflict: Section 4 of this administrative regulation does not conflict with KRS 186.070(4) or KRS Chapter 190. KRS 186.070(3) should have been amended at the same time KRS 186.070(4) or KRS Chapter 190 were amended.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, Section 4 is in harmony with the latest passed statutes.

(10) Any additional information or comments: (1) This administrative regulation is essentially the same as the draft presented to the 1994 General Assembly when the discussion of the amendment to KRS 186.070 and dealer plate abuse was discussed. (2) The Transportation Cabinet has included a revision to KRS 186.070(3) in its legislative package for the 1996 session.

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of the number of dealer plates a motor vehicle dealer is entitled to purchase.

### CABINET FOR WORKFORCE DEVELOPMENT State Board for Adult and Technical Education (New Administrative Regulation)

**780 KAR 9:131. Repeal of State Board for Adult and Technical Education administrative regulations: 780 KAR 9:010, 9:020, 9:030, 9:040, 9:050, 9:060, 9:070, 9:080, 9:090, 9:100, 9:110, 9:120 and 9:130.**

RELATES TO: KRS Chapter 151B

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: 780 KAR 9:010, 9:020, 9:030, 9:040, 9:050, 9:060, 9:070, 9:080, 9:090, 9:100, 9:110, 9:120 and 9:130 are no longer necessary in that the regulatory language contained in these regulations has been merged and provided for in amendments to administrative regulations being promulgated at this time.

Section 1. 780 KAR 9:010, 9:020, 9:030, 9:040, 9:050, 9:060, 9:070, 9:080, 9:090, 9:100, 9:110, 9:120 and 9:130 are hereby repealed.

J. LARRY STINSON, Chairman

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: August 22, 1995 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 31, 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 October 26, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Frankfort, Kentucky 40601.

### REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock



(1) Type and number of entities affected: This repeals 780 KAR 9:010, 9:020, 9:030, 9:040, 9:050, 9:060, 9:070, 9:080, 9:090, 9:100, 9:110, 9:120 and 9:130 because it is no longer needed here, it will appear in 785 KAR Chapter 1.

(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: N/A

(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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

#### LABOR CABINET

#### Kentucky Workers' Compensation Funding Commission (New Administrative Regulation)

#### 803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 342

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY AND FUNCTION: KRS 342.1223 created the Kentucky Workers' Compensation Funding Commission for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122. KRS 342.122 imposes special fund assessments upon workers' compensation premium for the purpose of funding and prefunding the special fund and Kentucky's Workers' Compensation Program. KRS 342.1223(3) provides the Kentucky Workers' Compensation Funding Commission with all the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power to make and promulgate administrative regulations. This administrative regulation provides the procedures and forms to be used to report and remit special fund assessments.

Section 1. Definitions. (1) "Carrier" shall have the same meaning defined in KRS 342.0011(6).

(2) "Insurance carrier" shall have the same meaning defined in KRS 342.0011(22).

(3) "Severance or processing of coal" shall have the same meaning defined in KRS 342.0011(23)(a).

(4) "Engaged in severance or processing of coal" shall have the same meaning defined in KRS 342.0011(23)(b).

(5) "Premium" for every group of self-insurers shall have the same meaning defined in KRS 342.0011(24).

(6) "Premium received" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(a).

(7) "Direct written premium" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(b).

(8) "Premium" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(c).

(9) "Return(ed) premiums" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(d).

(10) "Insurance policy" for an insurance company or group self-insurer shall have the same meaning defined in KRS 342.0011(26).

(11) "Self-insurance year" for a group self-insurer shall have the same meaning defined in KRS 342.0011(27).

(12) "Premiums" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the same as defined in KRS 342.0011(28).

(13) "SIC code" shall have the same meaning defined in KRS 342.0011(29).

(14) "KWCF" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(15) "Board" means the board of directors of the Kentucky Workers' Compensation Funding Commission.

(16) "Special fund assessment(s)" means the assessments imposed pursuant to KRS 342.122.

(17) "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(18) "Premiums received" for group self-insurers, including group self-insurers electing to report their premiums and have their special fund assessments computed in the same manner as insurance companies, means any and all assessments levied on its members by such group or contributed to it by the members thereof, including premiums charged off or deferred.

Section 2. Special Fund Assessments. (1) Special fund assess-



ments shall be imposed upon all premiums, including any premiums for Federal Black Lung, for policies providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance or Federal Black Lung coverage for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshoremen's and Harbor Worker's Compensation Act coverage;

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For policies with provisions for deductibles effective on or after January 1, 1995, the premiums upon which special fund assessments are imposed for insurance companies shall not include any schedule rating modifications, debits or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or returned at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned. Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in the severance or processing of coal.

(5) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or returned at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned. Premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance or Black Lung coverage.

(6) Special fund assessments shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in the severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies.

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of this administrative regulation.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6) and (7) of this section.

(d) The election made in accordance with paragraph (a), (b) or (c) of this subsection may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(e) Group self-insurers electing to report their premiums and have their special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's

policy year.

(f) Group self-insurers electing to report their premiums and have their special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or returned at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in the severance or processing of coal.

(9) Employers self-insuring their Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of Workers' Claims in accordance with KRS 342.0011(28). One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments thereon shall be paid to the KWCFB each calendar quarter.

(10) The premium calculated by the Commissioner of the Department of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11) Special fund assessments shall be paid quarterly, and are due and payable and must be received in the office of the Kentucky Workers' Compensation Funding Commission no later than thirty (30) days following the end of each calendar quarter. If the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable shall be sent to the KWCFB sufficiently in advance so as to be received by the KWCFB no later than close of business on the Friday immediately preceding the weekend due date.

(12) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that imposed by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that imposed by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured. If, after appropriate efforts, the excess cannot be returned to the insured, the excess shall be remitted to the Funding Commission. In no event shall an insurance carrier retain special fund assessments in excess of those imposed by KRS 342.122 and this administrative regulation.

Section 3. Penalty and Interest. The KWCFB Board or its designee may waive part or all of the penalty, but not the interest, where it is shown to the satisfaction of the board or its designee that failure to pay assessments timely is due to reasonable cause.

Section 4. Refunds. (1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, provided:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2) Taxpayers may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report. Such claim shall be submitted to the Kentucky Workers' Compensation Funding Commission on Form KWCFB-03 (Claim For Refund Report). The taxpayer shall submit with the claim all documents required or requested to support the claim, and any additional information requested by the Funding Commission.

(3) All refunds, including those made in accordance with subsection (2) of this section, are subject to audit by the Funding Commission.

Section 5. Audits; General. (1) In accordance with KRS

342.1223(g) the Kentucky Workers' Compensation Funding Commission shall conduct periodic audits independently or in cooperation with the Labor Cabinet or the Revenue Cabinet of all entities subject to the special fund assessments imposed by KRS 342.122.

(2) Until the initial periodic audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the taxpayer. After completion of the initial periodic audit, adequate supporting documentation and records shall be maintained for five (5) years from the date of the last Funding Commission audit or (5) years from the date that the premium and assessment was reported or refund or credit was taken, whichever is later.

Section 6. Audits; Insurance Companies. (1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, including:

- (a) Writing company's indicator;
- (b) Policy number;
- (c) Insured's name;
- (d) Transaction code;
- (e) Accounting date (YY/MM/DD);
- (f) Policy effective date (YY/MM/DD);
- (g) Invoice date (YY/MM/DD);
- (h) Premium;
- (i) Special fund assessment;
- (j) Total (premium and special fund assessment).

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department of Insurance;

(c) A listing of Kentucky policies containing written premium written off as a bad debt;

(d) A listing of policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

(e) A complete list of sample policies requested by Funding Commission;

(f) A complete list of deductible policies written nationwide. This list may contain only the policy number, insured's name, and policy effective date;

(g) A complete listing of deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs;

(h) A complete listing of deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation;

(i) All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system;

(d) A copy of the Kentucky Workers' Compensation Tax and

Assessment Excess Collections Report.

(4) The Funding Commission may utilize any of the following procedures in the completion of audits:

- (a) Detailed examination of records by policy;
- (b) Use of audit sampling techniques;
- (c) Verification and reconciliation to NAIC reports;
- (d) Other procedures the Funding Commission deems necessary.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period except under the following conditions:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied.

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 7. Audits; Group Self-insurers. (1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period, including:

- (a) Group self-insurer's indicator;
- (b) Policy or member number;
- (c) Insured's name;
- (d) Transaction code;
- (e) Accounting date (YY/MM/DD);
- (f) Member's effective date (YY/MM/DD);
- (g) Effective date of self-insurance year;
- (h) Invoice date (YY/MM/DD);
- (i) Premium;
- (j) Special fund assessment;
- (k) Total (premium and assessment).

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers' Claims;

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims;

(d) A complete list of sample policies or agreements requested by the Funding Commission;

(e) All other documents necessary to support reported premiums and assessments.

(2) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system.

(3) The Funding Commission may utilize any and all of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members' account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of Workers' Claims' reports;

(e) Other procedures the Funding Commission determines necessary.

(4) Upon the completion of an audit the Funding Commission will not reaudit a period except under the following conditions:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the

Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 8. Audits; Individual Self-insurers. (1) Upon request, self-insurers shall provide the Funding Commission with the following:

- (a) Loss experience reports;
- (b) Payroll records;
- (c) Kentucky UI-3;
- (d) Federal Form 941 "Employer's Quarterly Federal Tax Return";
- (e) Federal Form 940 "Employer's Annual Federal Unemployment Tax Return";

(f) Any additional information deemed pertinent or necessary.  
(2) The Funding Commission may utilize any of the following procedures in completion of audits:

- (a) Detailed examination of all required records;
- (b) Use of audit sampling techniques;
- (c) Other procedures the Funding Commission deems necessary.

Section 9. Audits; Protest and Resolution. (1) The Funding Commission may mail to the taxpayer a notice of any assessment assessed by it. The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the Funding Commission may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable. The refusal of such extension may be reviewed in the same manner as a protested assessment.

(2) After a timely protest has been filed, the taxpayer may request a conference with the Funding Commission staff. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative. Further conferences may be held by mutual agreement.

(3) For those issues not resolved during the conferences described in subsection (2) of this section, the taxpayer may request a conference with the Funding Commission's Board of Directors. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative.

(4) After considering the taxpayer's protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state that it is the final ruling of the Funding Commission, generally state the issues in controversy, the Funding Commission's position thereon and set forth the procedure for appeal to the Kentucky Board of Tax Appeals.

(5) The taxpayer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the Funding Commission shall issue such ruling within thirty (30) days from the date the request is received by the Funding Commission.

(6) After a final ruling has been issued, the taxpayer may appeal to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.340.

Section 10. Reports. (1) Insurance companies, group self-insurers and individual self-insurers shall file a Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter. The quarterly premiums report and assessment due and payable shall be received in the office of the KWCFC no later than thirty (30) days following the end of the calendar quarter.

(2) Insurance companies and group self-insurers shall file Form KWCFC-01 (Quarterly Premiums Report).

(3) Employers carrying their own risk shall file Form KWCFC-02 (Quarterly Premiums Report).

(4) Every insurance company providing workers compensation insurance in Kentucky shall submit to the KWCFC an ANNUAL COLLECTION AND AUDIT REPORT and a SIC CODE SUMMARY REPORT for each calendar year no later than April 30th following the end of the calendar year. These reports shall be submitted to the KWCFC on electronic diskettes and shall contain the information in the file content format as specified in the following instructions:

(a) Annual Collection and Audit Report:

- Field 1 Reporting Insurance Co. Name
- Field 2 Insurance Co. NAIC #
- Field 3 Year Covered by Report
- Field 4 Insured Company's Policy #
- Field 5 Insured Company's Name
- Field 6 Insured Company's Address
- Field 7 Insured Company's City
- Field 8 Insured Company's State
- Field 9 Insured Company's ZIP Code
- Field 10 SIC Code
- Field 11 Federal ID Number
- Field 12 Policy Effective Date (YY/MM/DD)
- Field 13 Direct Written Premium Reported to NAIC
- Field 14 Premium Reported to KWCFC
- Field 15 Reconciling Entry (NAIC-KWCFC)
- Field 16 All Employer Special Fund Assessment
- Field 17 Additional Assessment for Coal

(b) SIC Code Summary Report:

- Field 1 Reporting Insurance Co. Name
- Field 2 Insurance Co. NAIC #
- Field 3 Year Covered by Report
- Field 4 SIC Code
- Field 5 Total Direct Written Premium Reported to NAIC by SIC Code
- Field 6 Total Premium Reported to KWCFC by SIC Code
- Field 7 Reconciling Entry (NAIC-KWCFC)
- Field 8 Total All Employer Special Fund Assessment by SIC Code
- Field 9 Total Additional Assessment for Coal by SIC Code

(c) For the Annual Collection and Audit Report, 17 fields make up one (1) policy (record). For the Summary Report, nine (9) fields make up one (1) record. Fields can be up to 128 characters in width.

(d) Example (Annual Collection and Audit Report): ABC Ins. Co., Inc.; 534643; 1994; AS1234;XYZ Products,Inc.; 123Way Ave.; Frankfort; KY; 40602; 2345; 93-234567; 94/03/02; 345.99; 345.99; 0;0;0<CR>.

(e) Example (SIC Code Summary Report): ABC Ins. Co., Inc.; 534643; 1994; 2345; 34567.78; 34567.78; 0;0;0<CR>.

(5) Every group self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an ANNUAL COLLECTION AND AUDIT REPORT and a SIC CODE SUMMARY REPORT for each calendar year no later than April 30th following the end of the calendar year. These reports shall be submitted to the KWCFC on electronic diskettes and shall contain the information in the file content format as specified in the following instructions:

(a) Annual Collection and Audit Report:

- Field 1 Reporting Group Self-insurer Name
- Field 2 Group Self-insurer FEIN #
- Field 3 Year Covered by Report
- Field 4 Group Self-insurer's Policy or Member #
- Field 5 Insured Company's Name
- Field 6 Insured Company's Address
- Field 7 Insured Company's City
- Field 8 Insured Company's State
- Field 9 Insured Company's ZIP Code
- Field 10 SIC Code
- Field 11 Federal ID Number
- Field 12 Policy Effective Date (YY/MM/DD)
- Field 13 Direct Written Premium Reported to Workers' Claims

## ADMINISTRATIVE REGISTER - 830

Field 14 Premium Reported to KWCFC  
Field 15 Reconciling Entry (Workers' Claims-KWCFC)  
Field 16 All Employer Special Fund Assessment  
Field 17 Additional Assessment for Coal  
(b) SIC Code Summary Report:  
Field 1 Reporting Group Self-insurer Name  
Field 2 Group Self-insurer FEIN #  
Field 3 Year Covered by Report  
Field 4 SIC Code  
Field 5 Total Direct Written Premium Reported to Workers' Claims by SIC Code  
Field 6 Total Premium Reported to KWCFC by SIC Code  
Field 7 Reconciling Entry (Workers' Claims-KWCFC)  
Field 8 Total All Employer Special Fund Assessment by SIC Code

Field 9 Total the Summary Report, 9 fields make up one (1) record. Fields can be up to 128 characters in width.

(c) Example (Annual Collection and Audit Report): ABC Ins. Co., Inc.; 534643; 1994; AS1234; XYZ Products, Inc.; 123Way Ave.; Frankfort, KY; 40602; 2345; 93-234567; 94/03/02; 345.99; 345.99; 0;0;0<CR>.

(d) Example (SIC Code Summary Report): ABC Ins. Co., Inc.; 534643; 1994; 2345; 34567.78; 34567.78; 0;0;0<CR>.

(6) The data required to be submitted to the Funding Commission in this section shall be submitted in one (1) of the following formats, listed in order of preference, or any other format agreed upon by the parties:

(a) ASCII text with a semicolon (;) used as a field separator between different fields and a carriage return to indicate the end of the record;

(b) Files saved in Microsoft Excel (DOS, Windows, Mac; any version number);

(c) Files saved in Lotus 1-2-3 (DOS, Windows, Mac; any version number);

(d) ASCII text with a tab as a field separator between different fields and a carriage return at the end of the record.

(7) The data required to be submitted to the Funding Commission in this section shall be submitted on one (1) of the following types of diskettes, listed in order of preference, or any other format agreed upon by the parties:

(a) 3.5" 720K PC formatted micro-floppy diskette;

(b) 3.5" 800K Mac formatted micro-floppy diskette;

(c) 3.5" 1.4Mb Mac/PC formatted micro-floppy diskette;

(8) An insurance company or group self-insurer that does not write, receive or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Nonwriter Statement) to the Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602 no later than April 30th following the end of the calendar year.

Section 11. Forms. (1) Forms KWCFC-01, KWCFC-02, KWCFC-03, and KWCFC-04 are incorporated and adopted herein by reference.

(2) Forms may be obtained from the office of the Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602 during office hours, 8 a.m. to 4:30 p.m., Monday through Friday.

JAMES MEESE, Chairman

APPROVED BY AGENCY: September 12, 1995

FILED WITH LRC: September 15, 1995 at noon

PUBLIC HEARING: A public hearing will be held at the offices of the Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park, Frankfort, Kentucky 40601, at 10 a.m. on Thursday, October 26, 1995. Individuals interested in attending this hearing shall notify the Funding Commission in writing by October 21, 1995, five

days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Frank Dickerson, General Counsel, Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602-1220, (502) 573-3505.

### REGULATORY IMPACT ANALYSIS

Contact person: Frank Dickerson

(1) Type and number of entities affected: 275 insurance companies, 268 self-insured employers and 22 group self-insureds, all of which provide workers' compensation coverage and are subject to paying special fund assessments pursuant to KRS 342.122.

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

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

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

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

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect.

2. Continuing costs or savings: No effect.

3. Additional factors increasing or decreasing costs: No effect.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Restricted agency funds generated from assessments on taxpayers.

(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: Competitively, the provisions relating to the self-insured groups method of reporting will create a leveling effect of the assessment as it relates to rates of taxation. The regulation removes any advantages the groups might enjoy over the insurance companies by being able to manipulate billing and invoice dates to achieve different taxation rates.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available which will allow for tax equity.

(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

## ADMINISTRATIVE REGISTER - 831

policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because regulation applies equally to all regulated entities and there are no separate or multiple classes involved. Tiering is therefore inappropriate.

### 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. Fiscal administration.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to the imposition and collection of special fund assessments on premium expenditures incurred by local governments in providing workers' compensation coverage for their employees.

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: No impact. Special fund assessments paid by local governments will neither increase nor decrease on account of the regulation.

### CABINET FOR HUMAN RESOURCES Department for Mental Health and Mental Retardation Services (New Administrative Regulation)

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

RELATES TO: KRS 222.271

STATUTORY AUTHORITY: KRS 194.050, 222.271, 42 CFR Part 2

NECESSITY AND FUNCTION: KRS 222.271 mandates the cabinet to establish standards to ensure the confidentiality of alcohol and other drug abuse client records. This administrative regulation establishes confidentiality standards for federally assisted programs.

Section 1. Definitions. (1) "AOD agency" means an alcohol or other drug abuse agency licensed under the authority of KRS 222.231.

(2) "Federally assisted" is defined at 42 CFR Part 2, confidentiality of alcohol and drug abuse patient records, (October 1, 1994 edition).

Section 2. Applicability. An AOD agency, which is federally assisted, shall maintain a confidential record of treatment for all clients according to the provisions of 42 CFR Part 2, confidentiality of alcohol and drug abuse patient records (October 1, 1994 edition), as amended at 60 Federal Register 22,296-22,297 (1995).

Section 3. Material Incorporated by Reference. (1) 42 CFR Part 2, Confidentiality of alcohol and drug abuse patient records, (October 1, 1994 edition), 42 CFR Part 2, 2.11 and 2.12, as amended at 60

Federal Register 22,296-22,297 (1995) are hereby incorporated by reference.

(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

ELIZABETH REHM WACHTEL, PH.D., Commissioner  
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: August 14, 1995

FILED WITH LRC: August 30, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for Thursday, October 23, 1995 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by Friday, October 18, 1995 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: Currently there are 42 federally assisted alcohol and other drug abuse programs, which are affected. All of these programs are required to maintain client treatment records in a confidential manner and will be bound by these rules of confidentiality. The programs currently keep client treatment records confidential; however, these requirements will establish a standardized system statewide and give the state more direct control over the confidentiality of alcohol and other drug abuse client records. The programs will be responsible for training their staff and ensuring that their staff follow the rules of confidentiality. This can be accomplished through in-service training which the programs are currently required to provide for staff. The state will be available to assist the programs in the implementation of these requirements.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: There will be some costs providing technical assistance to the programs affected, but the cost will be minimal.

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 comment received, the

economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state 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: The maintaining of client treatment records in a confidential manner will help to encourage the public to seek treatment for alcohol and other drug abuse. The knowledge that records will be kept confidential will remove fear of disclosure which in some cases has been a significant deterrent to treatment.

(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: There is no statute, administrative regulation or governmental policy in conflict.

(a) Necessity of proposed regulation if in conflict: None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not used since the requirements apply equally to all federally assisted programs.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 2, Confidentiality of alcohol and drug abuse patient records, (October 1, 1994 edition), and 42 CFR Part 2, 2.11 and 2.12, as amended at 60 Federal Register 22,296-22,297 (1995).

2. State compliance standards. There are no differing state compliance standards. The federal regulations are merely being incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. 42 CFR Part 2 mandates that federally assisted programs providing alcohol and drug abuse treatment keep patient records confidential in accordance with the provisions of the regulation.

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

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of the September 11 and 12, 1995

The September meeting of the Administrative Regulation Review Subcommittee was held on Monday, September 11, 1995 and Tuesday, September 12, 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 August 7, 1995 meeting were approved.

**Present were:**

**Members:** Representative Jesse Crenshaw, Chairman; Senator Fred Bradley; Representatives Woody Allen and Jimmy Lee.

**LRC Staff:** Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia.

**Guests:** Lori H. Flanery, Executive Branch Ethics Commission; Londa L. Wolanin, Kentucky Higher Education Assistance Authority; Don Mullis, Mary Lassiter, Kim Blitch, Office of Financial Management and Economic Analysis; Kimberly Lyon, Angela Rodell, Kentucky Housing Corporation; Betty P. Barker, Kentucky Higher Education Student Loan Corporation; Daniel F. Egbers, David Holzwarth, Linda Wilson, Department of Personnel; Michael J. Denney, Finance and Administration Cabinet; Kathy Black-Dennis, Hanson Williams, Personnel Pilot Program; Lythia Metzmerer, Steven Fields, Larry J. Leach, Natural Resources and Environmental Protection Cabinet; John Ackman, Sue Teegarden, Kentucky Real Estate Commission; Nathan Goldman, Paula Stone, Board of Nursing; Pete Pfeiffer, Fish and Wildlife Resources; Stephen A. Coleman, Division of Conservation; Alan Hamilton, Bill Burnette; Kentucky Department of Agriculture; Aaron Keatley, Larry C. Taylor, Phillip Shepherd, Sally Wiley, Jeff Pratt, Pat Haight, James Hale, Steven M. Bartell, David Gray, Linda Stacy, Mary K. Adams, Phillip W. O'dell, Natural Resources and Environmental Protection Cabinet; Jack Damron, Brenda Priestley, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; Delmus Murrell, Beverly Haverstock, Workforce Development Cabinet; Jeanette S. Downey, Art Craig, Department of Technical Education; Denise Placido, Department for the Blind; Sue G. Simon, George Parsons, Department of Vocational Rehabilitation; Tim Chancellor, Bill Ralston, Kembra Taylor, Labor Cabinet; Marcy D. Ches, Department of Workers' Claims; Rebecca Goodman, Deborah Eversole, Aaron D. Greenwell, Charles Bright, Public Service Commission; Dennis L. Decker, State Fire Marshal; Judith Walden, Department of Housing, Buildings and Construction; Pam Aldridge, Jackie Eder, Ked Fitzpatrick, Karen Doyle, Eugene Hargis, John Underwood, Rick Foley, Gary W. Beville, Cookie Whitehouse, Robert Calhoun, John Gray, Cabinet for Human Resources; Jack B. Hall, Robert T. Van Hook, Sherry M. Cooper, Health Policy Board; Chuck Bolton, NSG Facilities; Susan Bush, Commonwealth Technology, Inc.; Michael Judy, Kentucky Scrap Processors; Tom V. Ellis, Appalachian Regional Health Care; Clarkson Parrent, CRA Managed Care, Inc.; T. K. Ananthakrishnan, Sheldon McCullun, Dupont; Kathrine Schaefer, Bluegrass Family Health; Nancy Galvagni, Sarah Nicholson, Kentucky Hospital Association; John Brazel, Tony Sholar, Mike Ridenour, Kentucky Chamber of Commerce; Sherman C. Hockenbury, Kentucky Ambulance Providers Association; Dot Darby-Paschall; Baptist Healthcare System; Dennis Brooks, Collin Ball, Ephraim McDowell Regional Medical Center; Carl Sumner, State Farm; Marie Alagia Cull, Stephen P. Russell, Richard Brown, John McCarthy, Humana, Inc.; James Carlross, Jr., Kentucky Association of Realtors; Bill Doll, Kentucky Medical Association; John Nichols, Larry Maggard, AIK; Carl Breeding, AIK/CIC; John Mark Fones, Commonwealth Health Corporation; Mike Helton, MMLEK; Dandridge F. Walton, KAHCF; Bonnie C. Kittinger, Manatee Professional Medical Transfer Service/Con-Care Medical Transport/Medical Transportation Service; Jim Manatee, Manatee, Wilder-Williams; Luther B. Hughes, Jr., PACE Board; Jody Curry, Purchase of Agricultural Conservation Easement (PACE) Corporation; Ted Bradshaw, KOA; Kent Riggs, David Sauer,

Ashland Inc.; Twyla Trujillo, Jerry Deaton, Kentucky League of Cities; Robert L. Barnett, Kentucky Pharmacists Association; Tom Fitzgerald, Kentucky Resources Council; Joan Whitman, Patrick A. Hayden, Kentucky Association of Realtors; Lloyd R. Cress.

**The Subcommittee determined that the following administrative regulation did not comply with statutory authority:**

**Cabinet for Human Resources: Department for Health Services: Emergency Medical Services and Ambulance Service Providers**

902 KAR 14:070 (& E). License procedures and fee schedule for ambulance providers and tiered response emergency medical services. At its July 10, 1995 meeting, the Subcommittee determined that the emergency version of this administrative regulation was deficient. Representative Lee: (1) stated that the ordinary version of this administrative regulation did not appear to differ from the emergency that had been found deficient; and (2) moved that the ordinary be found deficient.

At Chairman Crenshaw's request, Robert Calhoun, Emergency Medical Services, Cabinet for Human Resources, stated that while licensing and inspection provisions were the same in the ordinary and emergency, the ordinary differed from the emergency, particularly with regards to the definitions of various levels of care. In response to a question by Chairman Crenshaw, Mr. Calhoun stated that: (1) the operating content of the emergency and ordinary administrative regulations were the same; (2) the changes to definitions addressed the finding of deficiency because they made the ordinary consistent with certificate of need and licensure statutes, such as: (a) KRS 216B.015, establishing the services and types of care; and (b) KRS 211.590, defining ambulance provider, by including definitions of various levels of care, specifically listing non-emergency health transportation as a category of ambulance provider.

Mr. Sherman Hockenberry, President, Kentucky Ambulance Providers Association, stated that the Association believed that the ordinary administrative regulation complied with statutory authority. In response to a question by Chairman Crenshaw, Mr. Hockenberry stated that the ordinary differed from the emergency administrative regulation in the definitions section.

Representative Lee stated that: (1) the issues raised by this administrative regulation and the conflicting statutory definitions of ambulance services needed to be addressed by the General Assembly at its next Regular Session; (2) this administrative regulation should be referred to the appropriate legislative subcommittee for review of the issues raised by the conflicting statutory provisions; and (3) the issues should be resolved by legislative action in the amendment of the conflicting statutes, rather than by administrative regulation.

The Subcommittee approved a motion that: (1) this administrative regulation was deficient for the same reasons that the emergency was found deficient; and (2) the Subcommittee request LRC to refer the issues raised by this administrative regulation to the appropriate legislative subcommittee for recommended legislation to resolve statutory conflicts.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Kentucky Private Activity Bond Allocation Committee**

200 KAR 15:010. Formula for allocation of private activity bonds. This administrative regulation was amended to incorporate the following forms by reference: (1) Notice of Intent application; (2) Confirmation of Allocation of State Ceiling; (3) Confirmation of Carry-



forward Allocation of State Ceiling; and (4) Notice of Issuance.

**Real Estate Commission**

201 KAR 11:400. Agency disclosure requirements. This administrative regulation was amended to: (1) incorporate by reference required forms, and the Consumer Bulletin; (2) establish standards for realtor forms and realtor versions of the Consumer Bulletin; and (3) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Tourism Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 1:015. Boats and outboard motors; restrictions. This administrative regulation was amended to: (1) delete "must" and insert "shall" in Section 1(2), pursuant to KRS 13A.222(4); and (2) reformat a section by dividing it into subsections, pursuant to KRS 13A.220(4).

**Workforce Development Cabinet: State Board for Adult and Technical Education: Management of the Kentucky Tech System**

Beverly Haverstock, Counsel, and Delmus Murrell, Deputy Commissioner, appeared before the Subcommittee representing the Cabinet. It was explained that the amendments to this package of administrative regulations mainly dealt with conforming to the drafting requirements of KRS Chapter 13A. These amendments included proper citation of statutory authority, grammatical corrections, rewording for clarification, and specifying secondary and post secondary facilities, programs, and students for purposes of statutory authority for promulgating administrative regulations.

780 KAR 2:010. Administration of vocational-technical education schools.

780 KAR 2:020. Appeals process.

780 KAR 2:021. Repeal of State Board for Adult and Technical Education regulations: 780 KAR 2:045; 780 KAR 2:050; 780 KAR 2:070; 780 KAR 2:080 and 780 KAR 2:150.

780 KAR 2:030. Steering and advisory committees for Kentucky TECH schools primarily serving secondary students.

780 KAR 2:035. Advisory boards and committees for Kentucky TECH schools primarily serving postsecondary students.

780 KAR 2:040. Live work projects.

780 KAR 2:060. Suspension and expulsion of students.

780 KAR 2:090. Postsecondary vocational technical school admission priorities.

780 KAR 2:100. Attendance policies for postsecondary students in Kentucky TECH schools.

780 KAR 2:110. Student medical and accident insurance.

780 KAR 2:120. Standard for academic progress for postsecondary students.

780 KAR 2:130. Minimum standards of admission for postsecondary students in vocational-technical programs.

780 KAR 2:140 & E. Tuition and fees. Representative Allen asked what the fee increases are. Mr. Murrell stated that tuition was increasing from \$125 to \$150 per quarter, and that this was the first increase since 1992. Representative Bruce asked who paid this tuition. Mr. Murrell stated that it is usually the student, but sometimes the employer does.

**Instructional Programs**

780 KAR 4:010. General standards.

780 KAR 4:020. Diploma requirements for postsecondary students.

780 KAR 4:030. Standards for secondary programs.

780 KAR 4:040. Standards for postsecondary programs.

780 KAR 4:050. Certificate requirements for Kentucky TECH students.

780 KAR 4:060. Kentucky TECH guarantee.

**Veterans' Approval Agency**

780 KAR 5:010. Institutional courses, approval of.

780 KAR 5:020. Apprenticeship and OJT courses, approval of.

780 KAR 5:030. Revisions and amendments approval.

780 KAR 5:040. Denial or revocation of approval.

780 KAR 5:050. Inspection and supervision.

**Facilities and Equipment; of the Kentucky TECH System**

780 KAR 7:010. Definitions.

780 KAR 7:020. Area technology center standards.

780 KAR 7:030. Regional technology center standards.

780 KAR 7:032. Corrections education center standards.

780 KAR 7:036. Repeal of State Board for Adult and Technical Education regulations; 780 KAR 7:035 and 7:050.

780 KAR 7:040. Facility maintenance.

780 KAR 7:060. Equipment inventory.

780 KAR 7:070. Equipment insurance.

**Vocational and Teacher Education**

780 KAR 8:011. Repeal of State Board for Adult and Technical Education regulations: 780 KAR 8:010.

**Labor Cabinet: Department of Workers' Claims**

803 KAR 25:190. Utilization review and medical bill audit. Marcy Ches, staff attorney, was present representing the Department. Bill Doll, representing the Kentucky Medical Association, was also present. Ms. Ches explained that the amendment to this administrative regulation is to separate utilization review and bill audit, and to track the Cabinet for Human Resources utilization review requirements. Mr. Doll stated that this amendment would give consistency to utilization review, and he commended the Department for their reasonableness. The amendment and the administrative regulation were approved without objection.

**Cabinet for Human Resources: Department for Social Insurance: Public Assistance**

904 KAR 2:006. Technical requirements; AFDC. In response to the initial staff review the phrase "in Community Work Experience Program (CWEP) or Work Incentive Program (WIN) prior to October 1, 1990, and" was deleted from Section 9(5)(a).

**Food Stamp Program**

904 KAR 3:060 & E. Administrative disqualification hearings and penalties. Section 6(2)(b)1. of this administrative regulation was amended to clarify that the Kentucky Revised Statutes are to be considered as law and not evidence in a hearing.

**Department for Medicaid Services**

907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services. The Subcommittee approved an amendment proposed by Representative Lee that: (1) addressed the reevaluation of assets allowed by federal law; (2) provided clarification on the methodology the Department for Medicaid will use following reevaluation; and (3) how payment increases shall be made to each qualifying facility as an add-on to the usual payment rates.

**Kentucky Health Policy Board: Administration**

909 KAR 1:090 (& E). Establishment of the Kentucky risk assessment and risk adjustment system. Sherry Cooper, a member of the Health Policy Board, stated that the amendment to this administrative regulation simply cites the statutory authority for the annual adjustment of the surcharge.

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Kentucky Higher Education Assistance Authority: Teacher Scholarship Loan Program**

11 KAR 8:030E. Teacher scholarships.

**Finance and Administration Cabinet: Personnel Pilot Program**

200 KAR 22:030 & E. Comprehensive Employment Manual of Department of Vocational Rehabilitation for use in the pilot personnel

program.

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.

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.

200 KAR 22:060 & E. Comprehensive Employment Manual of the Department of Personnel for use in the Pilot Personnel Program.

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.

#### **Board of Nursing**

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.

201 KAR 20:410. Expungement of records.

#### **Department of Fish and Wildlife Resources: Game**

301 KAR 1:085. Mussel shell harvesting.

301 KAR 1:201. Fishing limits.

#### **Department of Agriculture: Livestock Sanitation**

302 KAR 20:076 & E. Identification of "farm fresh" cattle. Alan Hamilton was present representing the Department. Representative Allen asked if this program was compulsory. It was explained that it is a voluntary situation on the part of farmers if they want to designate their cattle as "farm fresh", but it is required that stockyards comply with certain provisions of this administrative regulation. Representative Allen voiced his discontent with an administrative regulation the provisions of which no one can adequately enforce.

#### **Purchase of Agricultural Conservation Easement Corporation**

302 KAR 100:010. Procedures for determining purchasing priority for agricultural conservation easements of other property interests in agricultural lands.

302 KAR 100:020. Procedures for purchasing agricultural conservation easements or other property interests in agricultural lands. In response to questions from Representative Bruce, Cabinet personnel stated that: (1) this administrative regulation was not an attempt to require condemnation of agricultural lands; (2) a farmer may authorize the purchase of an easement by the Purchase of Agricultural Conservation Easement Board (PACE); (3) the Commonwealth pays the farmer for the difference between the restricted value and unrestricted value of the property; (4) a farmer is given cash for the easement and the cash payment allows the farmer to keep the farm in production; (5) this relieves the farmer from having to sell the family farm for development purposes; (6) this administrative regulations set up standards for determining how these easements will be purchased; (7) the government does not purchase the land in fee simple, but only purchases an easement so the farmer can keep the land in production; (8) if the state decides to run a highway through the property, there would be a condemnation proceeding.

In response to questions from Representative Allen, Cabinet personnel stated that: (1) this was a completely voluntary program; and (2) the farmer is not required to sell the easement.

#### **Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Environmental Protection**

401 KAR 100:050. Site characterization, risk assessment, and remedial options. Philip Shepherd, Secretary, and Commissioner Bob Logan, Department of Environmental Protection, appeared on behalf

of the Natural Resources and Environmental Protection Cabinet.

Tony Sholar, Kentucky Chamber of Commerce, and Carl Breeding, Associated Industries of Kentucky, and Chemical Industry Council spoke against the administrative regulation.

Tom Fitzgerald, Director of the Kentucky Resources Council, spoke in favor of the administrative regulation with some reservations.

In response to a question by Senator Bradley, Mr. Sholar and Mr. Breeding responded that the entire administrative regulation would need to be rewritten before industry could support it.

Secretary Shepherd stated that: (1) this administrative regulation was promulgated to implement House Bill 540 (KRS 224.01-400) enacted during the 1992 General Assembly; (2) there was a great deal of concern during the 1992 session relating to the Cabinet's review and approval of clean up plans when hazardous substances were released into the environment; (3) House Bill 540 was enacted to: (a) deal with everything from minor spills to major releases of hazardous substances in the Commonwealth; (b) deal with the level and stringency of the Cabinet's review; and (c) require the Cabinet to provide more options and flexibility in dealing with clean up of hazardous waste; (4) this administrative regulation was promulgated to provide guidance for clean up of releases of hazardous waste; (5) the Cabinet worked for a year after the legislation was passed to get a handle on the issues involved in cleaning up releases; (6) historically the Cabinet has taken the position that releases should be cleaned up to pre-release conditions ("background"); (7) industry has maintained that higher levels of contamination should be authorized when the release does not pose a realistic threat to human health, safety or the environment; (8) since House Bill 540 was enacted, the Cabinet has attempted to set requirements for clean up that provide a balanced approach; (9) prior to the enactment of House Bill 540, very few clean up plans had been approved unless the cleanup was to background levels; (10) since House Bill 540 was enacted: (a) over 240 risk assessment clean up plans have been submitted to the Cabinet; and (b) 48 of those plans have been approved; (11) this administrative regulation provides the necessary guidelines and criteria that will enable outside consultants and industry to properly clean-up releases; (12) until this administrative regulation was promulgated, industry had not had the necessary clean-up guidelines; (13) advisory groups were formed to assist in the formulation of this administrative regulation; (14) two of the most highly respected national experts in the area of risk assessment, Drs. David Gray and Steve Bartell were employed by the Cabinet to assist in the formulation of this proposal; and (14) significant technical changes were made in this administrative regulation due to public comments.

In response to a question from Chairman Crenshaw, Secretary Shepherd stated that Dr. Gray and Dr. Bartell were present to answer any questions the subcommittee may have.

Mr. Sholar stated that: (1) the Chamber of Commerce was opposed to the regulatory package before the Subcommittee; (2) while House Bill 540 was enacted at the request of the regulated community to provide for remediation of hazardous releases to something less than background levels, as long as human health, safety and the environment were preserved, this administrative regulation is so prohibitive that it has essentially done away with risk based remediation; (3) the Cabinet has evaded the intent of House Bill 540 by providing a program that does not allow risk assessment remediation; (4) KRS 224.01-400 allows clean up to levels that protect human health, safety and the environment; (5) the standards in this administrative regulation exceed the mandate of KRS 224.01-400 by requiring clean up to background; (7) while there are KRS Chapter 13A deficiencies, the primary objection to this administrative regulation is that it exceeds legislative intent; (8) the Chamber is willing to work with the Cabinet to establish standards that: (a) comply with KRS 224.01-400; and (b) protect human health, safety and the environment.

Mr. Breeding stated that while the Cabinet had made a tremendous effort to work with the regulated community and develop a

workable package, this administrative regulation is not authorized by law and does not comply with KRS Chapter 13A in the following ways:

(1) there is no authority for promulgating this administrative regulation because: (a) KRS Chapter 13A prohibits administrative agencies from promulgating administrative regulations to implement a statute unless the statute being implemented expressly authorizes administrative regulations; (b) House Bill 540 authorizes administrative regulations to set out: 1. hazardous substance lists; and 2. methods of reporting; (c) there is no authority for adopting administrative regulations that deal with remediation and clean up of sites; (2)(a) this administrative regulation disregards the legislative mandate of House Bill 540 which provides for a risk based clean-up option so long as it protects human health, safety and the environment; (b) under this administrative regulation, it is not feasible to use a risk based approach; (3) there was no Environmental Quality Commission ("EQC") or recommendation prior to filing this administrative regulation, in violation of KRS Chapter 13A and KRS Chapter 224 which require the Cabinet to obtain the recommendation of the EQC before filing a proposed administrative regulation with LRC; (3) the Regulatory Impact Analysis ("RIA") is inadequate because it does not outline the proposed financial impact on the regulated community; (4) the notification requirement in the administrative regulation: (a) exceeds statutory authority; (b) is arbitrary and capricious; (c) requires responsible parties upon knowledge of a release to make reasonable efforts to notify persons who "are or are likely to be adversely affected by the release"; (d) the statute requires notification of public agencies, but does not require notification of affected persons; (e) it is impossible to comply with the notification requirement in this administrative regulation because the requirement is so vague and ambiguous; and (f) the General Assembly intended that the Cabinet notify affected persons; (5) the requirement that the responsible party obtain consent from off site property owners prior to performing clean up activities exceeds statutory authority because: (a) consent from off site property owners is not workable; (b) it effectively allows off-site property owners to determine which clean-up technique should be used, even though the statute clearly states that the option is given to the responsible party; and (c) by requiring the consent of off site property owners, the Cabinet is unlawfully intervening in private property rights; (7) if property is to be cleaned up to less than background levels, a deed notification is required on the affected property; (8) these strict requirements assure that background cleanup will be the only option available to responsible parties; (9) clean-up restrictions are inconsistent with KRS 224.01-400 because while U.S. EPA allows a range of clean-up from 10-4 to 10-6, Kentucky mandates 10-6 which establishes a clean-up standard which is 100 times more stringent than the federal requirements; (10) the ecological characterization and remediation requirements are far more extensive than contemplated by the General Assembly; (11) KRS Chapter 13A requires that agency actions under a federal mandate be no more stringent than the federal minimum requirements; (12) although the Cabinet does not have statutory authority, it has imposed ecological restoration requirements that may require: (a) restoration of impacted habitats; and (b) repopulation of species on a site specific basis; (13) a person may be required to conduct a pilot study before cleaning up a site, which is: (a) costly; (b) time consuming; and (c) leaves the toxic substance on the ground while the pilot study is being conducted; (14) there is no statutory authority to require remediation of historical releases: (a) this requirement has the affect of applying the statute retroactively; (b) a statute cannot be given retroactive effect unless it specifically provides for retroactive enforcement; and (c) no retroactive provision appears in KRS 224.01-400; (15) while KRS Chapter 13A requires administrative regulations to use plain and unambiguous language that is easily understood by a layman, this administrative regulation can only be understood by someone with a Ph.D. in toxicology; (16) the RIA indicates improper funding for the program: (a) the RIA provides that "funding for the review of site characteriza-

tions and risk assessments and for overseeing implementation of remedial options is provided by the state General Fund and the Hazardous Waste Management Fund."; and (b) KRS 224.46-580(15) specifically limits the Cabinet's use of the hazardous waste management fund, for purposes of KRS 224.01-400, to emergency response activities and remediation where the responsible party is not otherwise able to do so.

Mr. Fitzgerald stated that he reluctantly supported this administrative regulation and: (1) risk based assessment and clean up of hazardous waste sites involves: (a) science; (b) health science; and (c) policy choices; (2) although, after bringing all interested parties together, the Cabinet has come up with an administrative regulation that is far from perfect, it is doubtful that ten additional years of negotiation would result in agreement between industry and the environmentalists on this issue; (3) there are policy issues involved, including whether the: (a) person who releases a hazardous substance on his property owes a duty to notify neighbors of the spill; (b) person responsible for the spill has a duty to clean it up if the spill migrates on to the property of another; (c) adjoining landowner must give consent before the rights of the adjoining landowner are affected; and (d) person who releases a hazardous substance has an obligation to future land owners or to adjoining land owners, if a responsible party releases a hazardous substance on his property; (4) these policy choices are difficult to make and it is doubtful that the administrative regulation would be any better if it was resubmitted; (5) regarding the consent issue: (a) a responsible party has no right to trespass on another person's property; (b) if a hazardous substance migrates onto another's property, the law of trespass does not permit the responsible party to go on to that person's land to clean it up; (c) parties who neither owned, controlled, or released these substances must also be respected; (6) regarding historical releases: (a) the question is whether a party who releases a hazardous substance and finds a chemical released prior to his purchase of the land or prior to his release of a hazardous substance has the responsibility to clean up that release; (b) there are costs associated with cleaning up these releases to: 1. the company that spilled the substance; 2. future land owners; 3. neighbors; and 4. the public at large; (7) the Cabinet has done an adequate job of attempting to deal with these policy questions; (8) it is never reasonable to inflict additional risk of bodily harm or mortality upon the public without its knowledge or consent; (9) allowing for less protection of the public at large would be irresponsible; (10) industry will attempt to shift as much cost of clean up as possible to other parties; and (11) the environmental community will resist that cost shifting to the full extent of the law.

In response to questions from Representative Crenshaw, Mr. Fitzgerald stated that he had reservations about the administrative regulation because: (1) it does not require clean up when there is a de minimis or 1 in one million risk of cancer; (2) the appropriate clean up program would be to: (a) clean up all the substance now; or (b) manage the risk; (3) it allows for an increased risk of harm (4) an industrial user of land is not required to clean up the land to residential levels because workers are not there all the time and therefore increased contamination is more acceptable; (5) certain residential areas are located next to industrial sites and those residents bear an additional cost when it comes to environmental contamination; (6) scientists have: (a) complete health data only on approximately 5 percent of the numerous chemicals used by industry; and (b) only partial data on another 15 percent; (7) there is: (a) due cause to be concerned about the health risks associated with these chemicals; and (b) a need to assure that the workers and adjoining property owners are protected from the effects of these chemicals; (8) people should be aware of the risks involved when being associated with these chemicals; (9) in most cases no one knows what problems these chemicals may pose; and (10) it results in much less than background clean up in many cases.

In response to questions from Chairman Crenshaw, Secretary Shepherd stated that: (1) the consent requirement in this administra-

tive regulation provides that if a spill has migrated onto a neighbor's property, the Cabinet must approve a clean up plan; (2) as a state agency, the Cabinet is responsible to both the party responsible for the spill and the neighbor who now has a potential health hazard on his land; (3) there are current cases where neighbors dispute the methods used by responsible parties in cleaning up spills; (4) this administrative regulation requires the responsible party to obtain the consent of the adjoining property owner; (5) in response to the concerns of Mr. Breeding and others, the administrative regulation was amended to provide that the Cabinet can approve the clean up plan without the consent of the adjoining property owner, subject to resolution of the dispute between the parties; (6) the Cabinet cannot legally authorize the responsible party to trespass on another's property and clean up the spill; (7) while this administrative regulation does not contemplate placing a restriction on the deed of an adjoining property owner concerning a spill, it would require the responsible party to record a lis pendens type notice or legal description of the property where the contamination occurred; (8) if there has been a release on the land of the responsible parties that has migrated to adjoining property owners, the Cabinet can invoke emergency powers under KRS 224.01-400 and either clean up the spill itself or force the responsible party to clean up the spill; (9) the Cabinet has filed lawsuits in which all affected parties are brought before a court which the Cabinet has asked to use the court's injunctive power to clean up the release; (10) while the Cabinet has attempted to clean up these releases in the past without an administrative regulation, the absence of an administrative regulation is subject to challenge as a violation of KRS Chapter 13A which prohibits the implementation of policy not contained in an administrative regulation; and (11) this administrative regulation puts Cabinet policy in written form so that all parties will know what is acceptable clean up procedure.

Representative Allen asked Cabinet personnel to update the Subcommittee on the PCB contamination of the Mudd River.

Commissioner Logan responded that: (1) the Mudd River contamination was the result of an industry utilizing a lagoon that contained wastewater contaminated with PCBs; (2) the lagoon spilled into the Mudd River; (3) the Cabinet required a clean up of the site and a groundwater clean up of the property through the use of a groundwater trench; (4) there is still a disagreement about the acceptable levels of PCB in the soil along the Town Branch and Mudd River; (5) a risk assessment approach was applied to the clean up and acceptable levels of PCBs were established; (6) the matter is in litigation to determine if the Cabinet's recommendation is an acceptable PCB level for human health and the environment; and (7) while the worst cases have been remediated, the issue of run-off and sediment is still not resolved.

Representative Allen stated that: (1) Mr. Fitzgerald's testimony made a lot of sense; (2) there are valid arguments on both sides of this issue; (3) the problem is that the people no longer trust government to operate as it should; (4) government employees don't use common sense in the implementation of administrative regulations, and people get upset with government; (5) the Cabinet should not implement these administrative regulations with an intent to fine people and harass them; and (7) before government can function properly, people must trust government again.

Secretary Shepherd stated that: (1) the question about legislative intent raised by Mr. Sholar and Mr. Breeding is not so much the wording of the administrative regulation as it is whether industry can trust the Cabinet to implement this administrative regulation properly; (2) the legislature intended to allow more flexible clean up options if those options protected human health and the environment; (3) this administrative regulation will accomplish what the legislature intended; (4) the business community and industry is very skeptical; (5) if this administrative regulation is implemented in a sound way, using some common sense, industry's fears will be alleviated; (7) if this administrative regulation is never implemented, the level of trust can never be raised; and (8) the implementation of this administrative regulation will

result in a vast increase in risk based clean up.

In response to questions from Representative Lee, the Cabinet stated that: (1) this administrative regulation is not 100 times more stringent than the federal Superfund legislation; (2) federal law allows a range of clean up levels on a case by case basis from 10-4 to 10-6; (3) the federal government will not mandate the target clean up level, and maintains the flexibility to require cleaning until a level is reached that the federal government is comfortable with; (5) while the bottom of the clean up range is 10-4, there will be very few approved clean up plans at that level; (6) although the state program also allows various levels of clean up options, the state does not use the federal range; (7) 10-4 level means that under the best scientific evidence available there is a lifetime cancer risk of 1 in 10,000; (8) the 10-4 level is a significant cancer risk; (8) the state has set the target at 10-6 which means an increased cancer risk of 1 in one million; (9) the state level is consistent with what most other states are using; and (10) that does not mean that a clean up will not be approved with a level lower than 10-6, and the Cabinet may require additional restrictions on the property where the cancer risk is 1 in 10,000; (11) additional restrictions may include: (a) deed restrictions; (b) fencing; (c) black topping over the property; and (d) concrete over the property.

Mr. Breeding stated that: (1) the key issue is that the Cabinet is making value judgments that should be left to the General Assembly; (2) applicable statutes are self implementing and do not require the interpretation the Cabinet has placed upon them; (3) the General Assembly requires that a clean up protect human health and the environment; (4) the Cabinet is imposing its own interpretation of the body of nuisance and trespass law, as well as the law relating to real property; and (5) if the General Assembly intends that KRS 224.01-400 be implemented in the fashion that the Cabinet would like it could amend the statute.

Mr. Sholar stated that: (1) the Kentucky Chamber and the Manufacturers group proposed KRS 224.01-400 so that the value judgments the Cabinet had been making could be clarified; (2) the Cabinet had been dancing around remediation but not getting the job done; (3) the Chamber is not attempting to force contamination on adjoining property owners; (4) this administrative regulation is only 6 pages long but it is the 3 volumes of guidance documents that actually drive the program; (5) the guidance documents are still the policy of the agency; (6) the Cabinet has made every effort to allow for industry input into the process; (7) the policy issues are not going to be resolved; and (8) policy decisions are the function of the General Assembly.

Senator Bradley pointed out that there was no federal mandate for this administrative regulation and asked what federal regulatory programs applied to this administrative regulation.

Mr. Breeding responded that: (1) the equivalent to this program on the federal level is the Superfund program; and (2) House Bill 540 was enacted to deal with those releases that were not severe enough to meet the criteria for federal Superfund dollars.

Senator Bradley pointed out that he understood the language and didn't feel it violated KRS Chapter 13A in that regard.

Representative Bruce pointed out that: (1) 401 KAR 100:050 was approved by the Subcommittee on September 11; (2) this administrative regulation had not been approved by the EQC prior to filing; and (3) the administrative regulation must be reviewed by the EQC prior to filing.

Subcommittee staff stated that: (1) this issue was considered by the Subcommittee several years ago; and (2) the Subcommittee determined that Cabinet administrative regulations, like 401 KAR 100:050, must be submitted to the EQC and EQC must make a recommendation prior to the administrative regulation being filed with the Legislative Research Commission.

Representative Bruce made a motion, seconded by Representative Lee, that the administrative regulation be: (1) reconsidered; and (2) referred back to the Natural Resources and Environmental

Protection Cabinet until the EQC makes a recommendation.

Representative Lee stated that he seconded Representative Bruce's motion because the lack of review by EQC did not come up on September 11.

Representative Bruce stated that he: (1) was not trying to kill the administrative regulation; and (2) just wanted the administrative regulation to be properly approved.

Chairman Crenshaw stated out that: (1) the lack of EQC review was considered by the Subcommittee on September 11; (2) the issue was one of approximately 13 points made by Mr. Breeding at the meeting; (3) after consideration of the issues raised, the administrative regulation was approved; (4) it is not fair to say that Mr. Breeding did not get an opportunity to present the issue; (5) the issue was one of many raised by Mr. Breeding during his discussion; and (6) it is important that both Mr. Breeding and Mr. Shepherd be aware of this issue and be given full opportunity to discuss the matter.

In response to questions by Chairman Crenshaw, Secretary Shepherd stated that: (1) he was unsure whether the administrative regulation would die for failure to obtain EQC review prior to filing; (2) this administrative regulation was filed with the Legislative Research Commission and simultaneously filed with EQC; (3) the EQC had scheduled two previous meetings to consider the administrative regulation, but had been unable to do so for one reason or another; (4) this administrative regulation was considered by EQC on September 11 and approval was recommended; and (5) it is unclear whether the administrative regulation was reviewed and approved before the Subcommittee voted on the administrative regulation.

Mr. Breeding stated that: (1) there are three statutes that make it very clear that the Cabinet is required to file the administrative regulation with the EQC prior to filing with LRC; (2) this administrative regulation was filed with LRC on July 15, 1995; (3) the administrative regulation: (a) must be filed with the EQC prior to filing with LRC; and (b) the Cabinet must receive a recommendation from EQC prior to filing with LRC; (4) if this administrative regulation is allowed to go forward today, three sections of the Kentucky Revised Statutes would be violated; and (5) it would be a travesty to allow the administrative regulation to go forward under these conditions.

Secretary Shepherd stated that: (1) he had read the three sections Mr. Breeding discussed; and (2) is still at a loss to understand Mr. Breeding's position on the matter; (3) the Cabinet has a statutory duty to seek advisory input from EQC on the administrative regulation; (4) under the statute, the EQC's function is strictly advisory in nature; and (5) there would be no purpose in deferring the administrative regulation because the EQC recommendation has, in fact, been given.

Representative Bruce asked that the administrative regulation be deferred so this matter could be cleared up.

Mr. Breeding stated that: (1) the citations were: (a) KRS 13A.120(3); (b) KRS 224.10-100(17); and (c) KRS 224.01-110(6); (2) the interpretation of the Secretary in this matter is not correct; and (3) the statutes require a recommendation from EQC prior to filing with LRC.

In response to questions from Chairman Crenshaw, Secretary Shepherd stated that: (1) the Cabinet is hesitant to defer this administrative regulation because the regulatory package must be adopted prior to the change of administration; (2) this administrative regulation is the most important regulation to be passed by the Cabinet in terms of protecting human health and the environment; (3) any further deferral would make it impossible to get the administrative regulation through the process before the administration changes; and (4) the Cabinet is committed to seeing this administrative regulation through the process.

Representative Bruce stated that he: (1) stood by his original motion to send the matter back to the Cabinet; (2) had received a second to the motion; and (3) called for a roll call vote.

Chairman Crenshaw asked Representative Bruce to clarify his motion.

Representative Bruce responded that his motion was to: (1) call the administrative regulation back; and (2) send it to the Cabinet because, since the recommendation of EQC had not been made prior to filing, the process was not properly completed.

In response to a question by Representative Bruce, Subcommittee staff asked Representative Bruce if his motion was to: (1) reconsider the administrative regulation; (2) send it back to the Cabinet because it did not comply with KRS 13A.120(3); (3) ask that the administrative regulation be withdrawn; and (4) advise the Cabinet to refile the administrative regulation if it so desired.

Secretary Shepherd stated that he: (1) was unclear what the Subcommittee wanted the Cabinet to do; (2) is running out of time to get the administrative regulation through the process; (3) has committed to legislative leadership that he would get this program up and running before he left office; and (4) is afraid this deferral was simply a delaying tactic.

Representative Crenshaw stated that: (1) the Subcommittee meets again on October 2; (2) the Agriculture and Natural Resources Committee meets on October 11 to consider this administrative regulation; and (3) a deferral would mean only a 2 or 3 week delay at most.

Secretary Shepherd: (1) stated that he did not feel comfortable agreeing to a deferral without discussing the matter with counsel, and conferring with others on his staff concerning the consequences of a delay; and (2) asked for a further clarification of the motion before the Subcommittee.

Chairman Crenshaw stated that the motion was to: (1) reconsider the administrative regulation; and (2) refer the administrative regulation back to the Cabinet.

Secretary Shepherd asked the Subcommittee to allow him to consult with counsel and review the statutory basis for the motion prior to stating the Cabinet's position on the matter.

Chairman Crenshaw asked Representatives Bruce and Lee if they objected to letting Secretary Shepherd take a few minutes to consult with counsel. Representatives Bruce and Lee stated they had no objection to Secretary Shepherd's request. Secretary Shepherd thereafter left the meeting room to consult with counsel.

Upon his return, Secretary Shepherd stated that he had: (1) consulted with counsel; and (2) reviewed the statutory provisions cited by Mr. Breeding.

In response to questions from Chairman Crenshaw, Secretary Shepherd stated that: (1) if a deferral of this administrative regulation would resolve the concerns of Mr. Breeding, he would agree; (2) the objection raised by Mr. Breeding is based upon the opinion that KRS Chapter 13A and KRS Chapter 224 prohibit the Cabinet from even filing the administrative regulation until after the EQC has completed its review and reported its recommendations; (3) a deferral of the administrative regulation would not cure the problem raised by Mr. Breeding; (4) the Cabinet would be required to go back to the very beginning and file a new notice of intent; (5) after looking at the statutes in question, while it appeared that the EQC has the power to review, comment and make recommendations on any action the Cabinet may take, KRS Chapter 224 does not require the Cabinet to submit administrative regulations to EQC for review; (6) although, the EQC has the right and duty to review and comment on any administrative regulation of the Cabinet, the discretion lies with the EQC; (8) the Cabinet is not obligated to seek EQC review prior to filing the administrative regulation with LRC; (9) the Cabinet did not agree with Mr. Breeding's interpretation of the statute; (10) even if Mr. Breeding is correct, the defect cannot be cured by a deferral; (11) the interpretation of the statutory provisions really needs to be resolved by a court of law.

In response to a question by Chairman Crenshaw whether the EQC recommended approval, Secretary Shepherd responded that he understood that the EQC had recommended approval of the administrative regulation.

Representative Bruce asked subcommittee staff to explain the

KRS Chapter 13A issue.

Subcommittee staff responded that: (1) when the issue came up before, the Subcommittee determined that KRS Chapter 13A and the statutes relating to the EQC require that administrative regulations be submitted to EQC prior to filing with LRC; and (2) that is the same argument made by Mr. Breeding.

Representative Bruce pointed out that he agreed with Mr. Breeding on this issue.

Secretary Shepherd stated that: (1) his concern with Mr. Breeding's position is that: (a) KRS Chapter 13A now requires a notice of intent process before an administrative regulation is filed; and (b) if Mr. Breeding's argument prevails it will almost double the time necessary to get an administrative regulation through the process; (2) given Mr. Breeding's position, an administrative regulation would never be promulgated if the EQC fails to take up or make a recommendation on the administrative regulation.

Subcommittee staff pointed out that the: (1) prior ruling of the Subcommittee concerning the necessity of an EQC recommendation prior to filing was made prior to the amendments to KRS Chapter 13A that required a Notice of Intent To Promulgate an administrative regulation prior to the filing of an administrative regulation; and (2) whether submission by the Cabinet to EQC prior to the filing of a Notice Of Intent is unclear.

Mr. Breeding stated that: (1) this administrative regulation had been discussed for several months; (2) the first meeting of the task force occurred in December 1994; (3) the Cabinet prepared its Notice Of Intent in January, 1995; (4) this administrative regulation had been in the process for 9 months; (5) there was plenty of time to submit the proposal to the EQC for approval; (6) a desire to get an administrative regulation through the process should not be an excuse to ignore the law on a given issue; (7) the fact that other administrative regulations had not been approved by the EQC should not be used to justify failure to submit to EQC in this case.

Chairman Crenshaw asked if Mr. Breeding had any information that would indicate whether or not EQC had approved the administrative regulation on September 11 as Secretary Shepherd stated.

Mr. Breeding stated that: (1) he had received a letter from the EQC stating that they did not review or recommend the administrative regulation prior to filing with LRC; and (2) the administrative regulation was not on the September 11 written agenda received in his law office.

Secretary Shepherd stated that: (1) the procedure followed with this administrative regulation was standard procedure used by the Cabinet when promulgating administrative regulations; (2) the Cabinet routinely sends a copy of the administrative regulation to EQC as a matter of courtesy at the same time it is filed with LRC; (3) EQC has had the administrative regulation for quite some time and could have reviewed the administrative regulation before now; (4) the provision in KRS Chapter 13A, that prohibits the filing of an administrative regulation prior to obtaining the review of an advisory body, is triggered only if the promulgating authority is required to obtain EQC approval prior to filing with LRC; (5) while the EQC statute does place a burden on the Cabinet to file with EQC and obtain its approval or input, it: (a) does not require submission prior to filing with LRC; and (b) simply gives EQC the authority to review and comment on any administrative regulation if it so chooses.

In response to questions by Representative Crenshaw, Secretary Shepherd stated that if the Cabinet cannot file administrative regulations without prior EQC approval, it is held hostage by the EQC until such time as the EQC decides to take up an administrative regulation.

Subcommittee staff pointed out that: (1) ultimately, only a court decision would decide the issue; and (2) the appropriate statutes may need to be amended to clarify the matter.

Mr. Breeding offered to prepare a legal analysis for staff to review if the Cabinet would agree to defer the administrative regulation until October.

Secretary Shepherd stated that: 1) a deferral would do no good in this matter; (2) if Mr. Breeding's interpretation is correct, the administrative regulation could not be cured by deferral; and (3) the Cabinet could not agree to a deferral.

Representative Bruce stated that: (1) he did not understand the Cabinet's need to rush this administrative regulation through this month; (2) there would likely be another Secretary of Natural Resources in January; (3) the new secretary would look after the environment; (4) when his legislative seat is vacated there will be another equally competent legislator to fill his seat; and (5) it may be that Secretary Shepherd will even continue into the next administration.

Secretary Shepherd stated that: (1) he would ignore the comment about continuing into the next administration; (2) he made a clear commitment to promulgate this administrative regulation to both House and Senate leadership when KRS 224.01-400 was enacted; (3) the Cabinet had a large staff time and financial investment in the promulgation of this administrative regulation; and (4) it would be irresponsible to abandon ship and not complete the promulgation process.

Representative Allen stated that: (1) Mr. Shepherd had a very controversial administrative regulation that passed yesterday when not all members of the Subcommittee were present; (2) he is fighting very hard to keep the administrative regulation intact; (3) if the administrative regulation were deferred until next month, he would not have the votes to get the administrative regulation passed.

Representative Allen asked that the Subcommittee take some action on this matter.

Chairman Crenshaw asked if there was a quorum present.

Secretary Shepherd pointed out that: (1) Mr. Breeding's questions needed to be addressed; (2) the appropriate forum for his concerns is a court of law; (3) there is still another step in the legislative review process, review by a second legislative subcommittee; and (4) Mr. Breeding can present all his arguments for consideration to the legislative subcommittee to which LRC would refer this administrative regulation after review by the Subcommittee.

Representative Bruce stated that: (1) there does not appear to be a quorum present; and (2) once this administrative regulation is reviewed by the second committee, it can be considered by the Subcommittee again.

Subcommittee staff pointed out that: (1) at the end of today's meeting, the Subcommittee would lose jurisdiction of the administrative regulation until it becomes an existing administrative regulation 30 days after its referral to another legislative subcommittee by LRC, or sooner if reviewed by that subcommittee prior to 30 days after referral; and (2) this administrative regulation becomes an existing administrative regulation after this period and may then be reconsidered by the Subcommittee.

Representative Bruce pointed out that he: (1) may have been wrong in allowing Secretary Shepherd time to review the administrative regulation further; and (2) had two seconds to his motion, but one of his seconds had left; and (3) will not push the issue any further today.

Secretary Shepherd stated that since the matter needs to be resolved, his staff will prepare a more thorough legal analysis of the EQC issue.

#### **Justice Cabinet: Office of the Secretary**

501 KAR 6:080. Department of Corrections manuals. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

#### **Transportation Cabinet: Nonpublic School Transportation**

600 KAR 5:010 & E. Transportation of nonpublic school students. A question had been raised relating to the Cabinet's statutory authority to promulgate this administrative regulation. The Subcommittee was informed that a lawsuit involving this administrative regulation



## ADMINISTRATIVE REGISTER - 840

had been resolved as follows: (1) the Franklin Circuit Court, on August 9, 1995, upheld the constitutionality of KRS 158.115(1) &(2); and (2) cited KRS 158.115 as statutory authority for the disbursement of public funds to local boards of education for the transportation of nonpublic school students.

The Subcommittee approved this administrative regulation after: (1) concerns had been raised relating to whether the Cabinet had sufficient statutory authority to promulgate the administrative regulation; and (2) learning that a lawsuit involving the administrative regulation had been resolved: (a) in which the Franklin Circuit Court, on August 9, 1995, upheld the constitutionality of KRS 158.115(1) &(2); and (b) in which KRS 158.115 was cited as statutory authority for the disbursement of public funds to local boards of education for the transportation of nonpublic school students.

### **Department of Vehicle Regulation: Motor Vehicle Tax**

601 KAR 9:074. Kentucky highway use license, records, and taxes.

#### **Driver's License**

601 KAR 12:070. Driving privilege withdrawal for child support nonpayment. Representative Bruce pointed out that if a person's driving privileges are taken away he cannot get to work and therefore cannot pay his child support.

Cabinet personnel stated that: (1) In 1994, the General Assembly passed House Bill 311, requiring suspension of a license for nonpayment of child support if the statutory requirements are met; and (2) the Transportation Cabinet has no option but to proceed with implementation of House Bill 311.

In response to questions from Representative Bruce, Cabinet personnel stated that: (1) a one year arrearage must exist before a case will be referred to the Transportation Cabinet; (2) the state will begin looking at arrearages as of January 1, 1994; (3) the Cabinet for Human Resources (CHR) has advised it that a case will not be referred for license suspension so long as the current child support obligation is being paid; (4) CHR had already implemented its portion of House Bill 311 with the adoption of 904 KAR 2:410; and (5) any arrearage that existed prior to January 1 1994 will not be considered in determining whether to suspend a person's driving privileges.

In response to questions from Representative Allen, Cabinet personnel stated that: (1) CHR sends a list of individuals who are delinquent in their child support obligation to the Transportation Cabinet; (2) the Transportation Cabinet then sends a letter to the individual telling him his license is in jeopardy; (3) by the time Transportation sends this letter, the individual has already had a hearing before CHR and has been advised that he may lose his driver's license; (4) the Transportation Cabinet then suspends the person's driving privilege, and sends the individual a letter notifying him that his driving privilege has been withdrawn; (5) the Transportation Cabinet does not physically take the license, but the logs the suspension into the computer; (7) when a person is stopped, the state trooper routinely checks the computer to determine if a person is driving on a suspended license.

#### **Department of Highways: Traffic**

603 KAR 5:072. Mandatory annual bus inspection.

603 KAR 5:110. Permits for moving overdimensional manufactured homes and boats.

### **Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration**

781 KAR 1:040. Rehabilitation technology services.

#### **Public Service Commission: Utilities**

807 KAR 5:013. Management and operation audits.

### **Department of Housing, Buildings and Construction: Standards of Safety**

815 KAR 10:050. Kentucky Fire Prevention Code.

### **Cabinet for Human Resources: Department for Social Insurance: Public Assistance**

904 KAR 2:060. Delegation of power for oaths and affirmations.

#### **Food Stamp Program**

904 KAR 3:020. Financial requirements.

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

904 KAR 3:070. Fair hearings.

### **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. Jack Hall, Chairman of the Health Policy Board, Sherry Cooper, a member of the Board, and Robert Van Hook, Executive Director, appeared before the Subcommittee representing the Board.

Mr. Hall clarified that the only issue concerning this administrative regulation is the issue of "designated" provider vs. contracted providers.

Robert VanHook, Executive Director, Kentucky Health Policy Board, gave a brief overview. He said this administrative regulation regards Accountable Health Plans (AHP) and the process for them to be certified to operate in the Kentucky Health Purchasing Alliance. He said the principle concern in the hearing process was HMOs designating hospitals rather than contracting with them. He stated that the Board felt it would be redundant to place a requirement for HMOs to have contracts with providers in this regulation governing a limited portion of the insurance market.

He gave the following reasons for this: (1) The Alliance program rules and their application process require that insurers be in good standing with the Department of Insurance. (2) The Department of Insurance general counsel testified that the insurance code does not require provider contracts for HMOs, rather the Department of Insurance looks at whether they can provide the covered benefits. (3) KRS 304.17A-070(2)(a) requires AHPs to be licensed and in good standing with licensure boards for participating providers, and (4) CHR has a regulation, 902 KAR 20:054, that defines the license criteria for HMOs: "shall provide services directly or through contract."

He said since insurers are required to comply with all the laws and regulations as a condition of doing business and since Accountable Health Plans are required to be in good standing with license boards, it would be redundant to include requirements for contracts by HMOs in this administrative regulation.

Bill Doll, representing the Kentucky Medical Association (KMA) stated that he would only make a brief general observation that this administrative regulation establishes a precedent that is inappropriate and may be dangerous. He stated that what we have here is someone speaking for someone without speaking to someone, designating an entity as part of a group without their approval. He said that someone could also conceivably do this, indicating that a specific cadre of physicians would provide services without ever having a contract with them.

Nancy Galvagni, representing the Kentucky Hospital Association (KHA), said that this action has been taken mainly against hospitals. She stated a letter was sent out by Humana in May to various providers indicating that they were going to file a bid with the Health Purchasing Alliance to become an accountable health plan, and that each of these hospitals were being "designated" as a provider. Ms. Galvagni stressed the unilateral nature of this action. She stated that the letter simply said that their members would receive their full contractual benefits for covered medically necessary services when they access these hospitals. She stated that Humana is the only plan that is doing this designation. She stated that she believes that there are a number of violations of H.B. 250 by not having a requirement in this administrative regulation to require that contracts be required because: (1) H.B. 250 defines a provider network as an affiliated group. She said affiliated certainly means an agreement, not a



unilateral action, and (2) H.B. 250 requires utilization management and the monitoring of quality and cost effectiveness of the network. She stated she doesn't believe any of these things can be done without a contract.

Ms. Galvagni stated that she believes that probably the most important issue that is going to be a problem is that the public is going to be misled by this designation. She said that with contracts hospitals agree not to balance bill patients, it's called a "hold harmless". She said if there is no contract, hospitals haven't agreed to that. She said Humana has reserved the right to decide what is medically necessary, and consumers are going to go to these hospitals and find out that they are going to balance billed. She cited a situation in Ashland concerning Humana and a hospital there.

She requested that a requirement be placed in this administrative regulation that contracts be required for exclusive networks.

Dennis Brooks, representing Ephraim McDowell said that this was causing a major problem. He said that McDowell was one of the designated hospitals, and that Humana is creating a situation where consumers are assuming a risk, financial and otherwise, that they are not anticipating. He said a reasonable person would assume out of pocket expenses would be the same at a designated hospital as at a contracted hospital, but that this is not the case because a designated hospital has not agreed to those things to which a hospital under contract would agree. He said balance billing would therefore occur.

Mr. Brooks took issue with Robert VanHook's comment about the redundancy of requiring contracts in this administrative regulation. He said it appears to him that either Humana is being allowed to not follow the law or the Health Policy Board is not enforcing the regulations they reference in their July 24 Statement of Consideration. He stated that because Humana does not want to pay reasonable reimbursement rates Ephraim McDowell does not have a contract with Humana. He added that if Humana does not want to come to a fair price McDowell doesn't want to be designated and does not want to be listed in their Humana's network.

John Mark Fones, with Commonwealth Health Corporation, stated that one of their hospitals, prior to formation of the alliance, was designated only for certain services. He said that it would be difficult for enrollees to remember which hospital to go to for which service.

Tom Ellis, representing Appalachian Regional Hospitals, stated that they have been familiar with Kentucky's HMO statutes since 1974 and that it is to their knowledge unprecedented that any HMO would try to impose designation. He said managed health care implies cooperation and ARH will not accept designation. He stressed that the public protection issue is important.

Steve Russell, Director of Product Administration for Humana, stated that this regulation provides a valuable platform for the development of the Accountable Health Plans, health plans that truly view themselves as being fully accountable for the quality of care provided rather than just as claims processors. He said it is unfortunate that the Kentucky Hospital Association (KHA) and some of its members have chosen this forum to attack Humana and our practice of hospital designation.

He stated that Humana's position on this proposed administrative regulation is a responsible approach to overseeing accountable health plan activities, and that Humana applauds the Health Policy Board's efforts and supports the adoption of the administrative regulation without amendment. He added that Humana also does not believe that the change being proposed by the Kentucky Hospital Association requiring contracts between accountable health plans and all providers is necessary, appropriate, or beneficial to the public.

The following are the remarks of Mr. Russell presented orally and in written form to the Subcommittee. "There are five points regarding designation of hospitals that Humana wishes to raise today. (1) Competition is good for the Kentucky consumer. Competition lowers prices of health care services while increasing access and improving the quality of services provided. Through its actions and correspon-

dence to its members, the KHA apparently shuns competition. KHA members want to control the marketplace regardless of the harm the monopolistic stance causes the consumer.

In some parts of Kentucky, health care competition is very limited. There are 81 single hospital communities in the Commonwealth. In these communities when access to other hospitals is less convenient, the one-hospital markets have been able to effectively control and dictate hospital prices.

In recent years, Humana has successfully expanded statewide. In the past 18 months we have signed contracts with 15 hospitals, some of which had been "designated". However, we have encountered significant and concerted resistance to our hospital contracting efforts in some areas. Now, with the advent of provider sponsored accountable health plans, these hospitals will be in a position to monopolize the marketplace by refusing to contract with other plans or by using their control to leverage a limited number of health plans to the terms dictated by the hospitals. This has been illustrated to Humana on a number of occasions in recent years. We have tried to sign contracts with every hospital we have ultimately designated. Some refuse to talk with us. Others refuse to accept a lucrative contract that would pay all of their charges. The designation process we utilize simply attempts to recognize that providers cannot and should not be given the opportunity to hold the marketplace hostage to their terms. (2) This designation process works. Provider networks have been expanded geographically as a direct consequence of our designation activity. In recent days, we have signed contracts with Appalachian Regional Hospitals in eastern Kentucky. Johnson and Floyd counties also now have contracted facilities as a result of our designation policy. (3) Designation is a legitimate practice that does not violate any statute or regulation in Kentucky. (4) The KHA's contention that utilization review cannot be performed without provider contracts is totally unfounded. A contract with providers is not required for utilization review. This review program is carried out as a matter of course by health insurance plans across the country, regardless of whether a contractual relationship with providers is in place, and (5) The KHA contends that our designation practice has caused confusion and resulted in extensive claims payment errors. That assertion is grossly exaggerated. Humana stands ready to aggressively address any concerns, but can't respond if no one had specifically complained. It has never been Humana's policy to deliberately mis-pay claims. Our policy has always been to rectify claims errors as quickly as possible.

If the agenda of the KHA is to truly serve the needs of affected members, the hospital that are now raising issues here today would have contacted Humana directly when these issues first came to light and asked for assistance in helping the members. This has not been the case because this is not the KHA's objective. Rather, hospitals have been scouring their records to find issues and have been threatening to withhold access to residents in their counties.

What is evident is quite the contrary. Humana has brought new competitive blood to the marketplace. Humana has offered comprehensive health care plan alternatives at a lower cost in areas where only one or two plans have previously been available. Undoubtedly we have made claims payment errors. Any accountable health plan will tell you the same will occur in their claims processing centers. But, Humana is ready to address any problems and correct them.

To the KHA, Shame on you!!! The citizens of the Commonwealth deserve better. They want choice, not dictatorial, monopolistic delivery systems designed for the sole benefit of their institutions. We, at Humana, take seriously our obligation to our 350,000+ members. We encourage you to look beyond your own interest and focus on the broader goals of health care reform."

Jack Hall said that the real battle is between the KHA and Humana. He said it is the Boards contention that enforcement is not with the Health Policy Board, and that he has asked the Insurance Department to revisit their position (that the Insurance Code does not require contracts). Secondly, he said that the licensing function is with

CHR. He concluded by saying that the Board thinks there is ample ability out there, and avenues including the courts, to challenge this. He said the reason this is an issue is that open enrollment period is approaching. Chairman Crenshaw raised the question of payment for services. Mr. Hall said it was based on the reasonableness and necessity for the services. Chairman Crenshaw asked Mr. Russell if Humana was going to pay all charges. Mr. Russell responded that at designated hospitals there would be full payment for medically necessary services. Chairman Crenshaw asked if there were a life threatening situation, was Humana going to pay the full charge. Mr. Russell responded that Humana does not get into rate review at designated hospitals.

Jack Hall added that the definition of what is medically necessary has been defined.

Tom Ellis said that the complexity of treatment today requires a contract.

Mr. VanHook stated that all comments concerning this administrative regulation have come from providers.

Chairman Crenshaw stated that some members of the Subcommittee have other commitments, and requested that all comments be brief.

Jack Hall read the following statement. "The Accountable Health Plan (AHP) Certification regulation (909 KAR 1:080) outlines the process and criteria for insurers to operate within the Kentucky Health Purchasing Alliance (KHPA). Hospitals have expressed concern that Humana is unilaterally "designating" hospitals without the benefit of a contract. This AHP regulation is silent on this issue because it is covered in a number of other places in law and regulation.

KRS 304.17A-070(2)(a) requires that an AHP "Is licensed and in good standing with the licensure boards for participating providers." The KHPA's AHP application requires that insurers provide..."documentation that the health insurance plans are licensed and in good standing with the Kentucky Department of Insurance...."

The DOI general counsel stated that "...the Insurance Code does not require provider contracts for HMOs." Instead, DOI reviews HMO applications to assure that they can provide the health care benefits under their insurance offering in their service area.

All insurers are required to comply with all applicable laws and regulations as a condition of doing business in the state.

Statutory and regulatory authority already exists elsewhere that requires that HMOs have contracts with providers other than those within their direct employment. The Cabinet for Human Resources has issued regulations\* which defines licensure criteria for health maintenance organizations (HMOs). Section 4 of that regulation requires that HMOs "...shall provide services directly or through contract with appropriately licensed providers." A subsequent opinion issued on July 15, 1995, by the Cabinet for Human Resources found that HMOs must have contracts with providers rendering any services that the HMO does not provide directly, except for medically necessary emergency services. The Kentucky Health Policy Board is the final hearing authority on licensure matters. \*(902 KAR 20:054 pursuant to KRS 216B.042(1)(c))

The AHP regulation deals only with insurers operating within the KHPA. Requiring contracts for HMOs through this regulation would omit most of the insurance market and could place the KHPA at a competitive disadvantage".

Chairman Crenshaw mentioned testimony concerning the issue of the buying public thinking they were covered and asked Mr. Hall if he thought the Department of Insurance would be amenable to overseeing this. Mr. Hall said yes. Mr. Ellis disagreed. Mr. Hall said his firm conviction is that the Department of Insurance (DOI) will. Ms. Galvagni said that concerning other recourse the DOI has already said that they aren't required by the insurance code to have contracts.

John Gray, an attorney for the Cabinet for Human Resources, stated that 902 KAR 20:054 Section 4 requires that HMOs provide services directly or through contract.

Representative Lee asked if the Cabinet is going to enforce this.

Mr. Gray responded that he did not set policy.

Maria Cull stated that it was her understanding that a complaint has already been made. Representative Lee said that that language "directly or through contract" is so plain. Ms. Cull added that this is not the forum to decide this. Representative Lee said that he agreed and added that this point should not be before this Subcommittee. Jack Hall voiced agreement.

Senator Kafoglis voiced that the Subcommittee was torn between concern for the consumer and concern for healthy competition.

Discussion centered around negotiation and mediation and Senator Kafoglis asked if there was any ability by the Board to require mediation. Mr. Hall responded "not that I know of".

Senator Bradley spoke of his desire for a workable solution.

Mr. Brooks said that Humana has not been willing to pay a reasonable amount.

Mr. Russell said Humana is trying to negotiate, is giving access, and is paying the full price. He added that this only involves one plan, the basic plan, and that the DOI has jurisdiction.

Chairman Crenshaw stated that the issue for the Subcommittee is "Does the Health Policy Board have the authority to promulgate this administrative regulation?"

Senator Bradley stated that he just doesn't think it goes far enough.

The administrative regulation was approved without objection.

**The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:**

**Executive Branch Ethics Commission: Ethics Commission**

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

**Department of Personnel: Classified**

101 KAR 2:100E. Leave administrative regulations.

**Unclassified**

101 KAR 3:010E. Leave administrative regulations.

**Kentucky Board of Certification of Marriage and Family Therapists**

201 KAR 32:010 & E. Definitions.

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

201 KAR 32:030 & E. Fees.

**Justice Cabinet: Department of Corrections: Class D Felons**

501 KAR 2:020. Definitions.

501 KAR 2:040. Waivers.

501 KAR 2:050. Transfer requests.

501 KAR 2:060. Procedures for housing of Class D felons.

**Office of the Secretary**

501 KAR 6:170. Green River Correctional Complex. In response to questions by Representative Allen, Mr. Jack Damron, General Counsel to the Department, stated that: (1) smoking was not permitted in the Complex; (2) smoking was permitted outside the administrative building; (3) he was uncertain whether there was a specific room in which inmates were permitted to smoke; (4) he did not know how much money was spent to build the facility; and (5) the decision to ban smoking was submitted by the warden and approved by the Commissioner. Representative Allen stated that he: (1) wondered how much of the revenue derived from tobacco taxes was spent to build the facility; (2) was upset over the policy; (3) would like to move to find this administrative regulation deficient; and (3) people who want money to build facilities in the state ignore the fact that the Kentucky tobacco industry is a billion dollar industry, from which 800 million dollars tax revenue is derived, while attempting to destroy the tobacco industry. Representative Allen moved that this administrative regulation be found deficient.

Mr. Damron stated that the restrictions against smoking did not

## ADMINISTRATIVE REGISTER - 843

stem from an attack on the tobacco industry, but were intended to deal with the problems created by inmate use of tobacco for gambling or as a form of cash.

The Subcommittee approved the motion that this administrative regulation was deficient.

Mr. Damron: (1) stated that this administrative regulation contained a number of policies governing the operation of prisons, most of which did not relate to smoking by inmates; and (2) requested that this administrative regulation be deferred to the Subcommittee's October, 1995 meeting to permit him to confer with the warden and the commissioner on whether this policy should be deleted.

Representative Allen stated that: (1) there should be a level playing field; (2) he did not advocate that anyone smoke or chew; (3) the government should not try to kill the tobacco industry that raises money for state expanders; and (4) at least a designated area should be provided that would allow people to smoke without affecting others who do not smoke.

In response to a question by Mr. Damron, Mr. Allen stated that his concern was over the restriction of employee smoking.

The Subcommittee approved motions to: (1) reconsider this administrative regulation; (2) remove the Subcommittee's finding of deficiency; and (3) agree to the request to defer the administrative regulation to its October, 1995 meeting.

### **Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance**

787 KAR 1:010 & E. Application for employer account; reports.

787 KAR 1:020 & E. Change of status; discontinuance of business.

787 KAR 1:030 & E. Employer contributions.

787 KAR 1:040 & E. Posting notice to employees.

787 KAR 1:050 & E. Social Security number required of employees.

787 KAR 1:060 & E. Separation for cause; reports.

787 KAR 1:070 & E. Reasonable time for protesting claim.

787 KAR 1:080 & E. Labor dispute or strike; notification.

787 KAR 1:090 & E. Claimant's reporting requirements.

787 KAR 1:100 & E. Week of unemployment defined.

787 KAR 1:110 & E. Appeals.

787 KAR 1:120 & E. Fees for representing claimant.

787 KAR 1:130 & E. Determination defined.

787 KAR 1:140 & E. Unemployment insurance fund payments.

787 KAR 1:150 & E. Interstate claimants.

787 KAR 1:160 & E. Time extension for reports and notices.

787 KAR 1:170 & E. Cash value of board and lodging.

787 KAR 1:180 & E. Employer's records.

787 KAR 1:190 & E. Recoupment and recovery.

787 KAR 1:200 & E. Maximum weekly benefit rate.

787 KAR 1:210 & E. Employer contribution rates.

787 KAR 1:220 & E. Required reports and due dates.

787 KAR 1:230 & E. Due dates.

787 KAR 1:240 & E. Fraud disqualifications.

787 KAR 1:250 & E. Release of notice of levy.

787 KAR 1:260 & E. Voluntary election of coverage.

787 KAR 1:270 & E. Covered employment.

787 KAR 1:280 & E. Limitation on pension deductions.

787 KAR 1:290 & E. Contract construction rates.

787 KAR 1:300 & E. Successorship.

787 KAR 1:310 & E. Claimant profiling.

### **Employment Services**

787 KAR 2:010 & E. Veterans' benefits.

787 KAR 2:020 & E. Confidentiality of records of the Department for Employment Services.

787 KAR 2:030 & E. Classifying a person as unemployed; appeals.

### **Department for Employment Services: Office of Training and Reemployment**

788 KAR 2:010 & E. Job Training Partnership Act.

### **Labor Cabinet: Occupational Safety and Health**

803 KAR 2:320E. Adoption of 29 CFR Part 1910.1000-.1500.

803 KAR 2:403E. Adoption of 29 CFR Part 1926.50-.66.

803 KAR 2:425E. Adoption of 29 CFR Part 1926.1100-.1148.

803 KAR 2:500E. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, Maritime employment.

### **Department for Housing, Buildings and Construction: Heating, Ventilation, and Air Conditioning Licensing Requirements**

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

### **Cabinet for Human Resources: Department for Medicaid Services: Medicaid Services**

907 KAR 1:009E. Physicians' services.

907 KAR 1:010E. Payments for physicians' services.

907 KAR 1:060E. Medical transportation. (Repeals 907 KAR 1:420)

907 KAR 1:061E. Payments for transportation services.

**The Subcommittee adjourned at 11:30 a.m. until October 2, 1995 at 10 a.m. in Room 149 of the State Capitol Annex.**

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON  
ECONOMIC DEVELOPMENT AND TOURISM  
Meeting of August 17, 1995**

The following administrative regulations were available for consideration by the Interim Joint Committee on Economic Development and Tourism during its meeting of August 17, 1995, having been referred to the Committee on August 9, 1995, pursuant to KRS 13A.290(6):

307 KAR 4:010  
307 KAR 1:030

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:

307 KAR 4:010  
307 KAR 1:030

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 August 17, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**Attachment to Interim Joint Committee Review of Administrative Regulations**

The Interim Joint Committee on Economic Development and Tourism met on Thursday, August 17, 1995, and considered the following administrative regulations: 307 KAR 4:010 and 307 KAR 1:030. These administrative regulations were approved with the following amendments:

(1) Section 5 (1)(c) of 307 KAR 4:010, administrative regulations proposed for the Kentucky Industrial Development Tax Credit Program set forth in KRS 154.28-010 through 154.28-090, propose that a "full-time job shall mean a job whose work week averages thirty (30) or more hours." After discussion, Representative Cyrus made a motion, seconded by Senator Boswell, and adopted by the committee, that Section 5 (1) (c) of 307 KAR 4:010 be amended to read as follows:

"The projected number of employees to be hired in the future at the manufacturing or agribusiness facility of the eligible company from the commencement date of the financing agreement and as a result of the receipt of the inducements. For purposes of this subsection, full time job shall mean a job whose work week averages thirty-five (35) or more hours. As a part of this analysis pursuant to this paragraph the authority shall consider the following information:"

(2) After discussion, Representative Cyrus made a motion, seconded by Senator Boswell, and adopted by the committee, that:

Section 5 (1) (c) 3. of 307 KAR 4:010, administrative regulation proposed for the Kentucky Industrial Development Tax Credit program, regarding the definition of "skilled" job be amended to read as follows:

"The number of managerial and technical jobs and skilled, semiskilled and unskilled jobs (based on the level of specialized training required to perform the particular job competently), created by the economic development project and the average hourly wage and average salary for each job category. For purposes of the foregoing sentence, the term "unskilled" describes those jobs which require no specialized training to perform the job competently. Likewise, "semiskilled" describes those jobs which require forty (40) hours or less training to perform the job competently and "skilled" describes those jobs that include (a) those possessing a certificate or degree from an accredited vo-tech school, college or university; (b) persons who have been independently licensed in a specific occupation, and who, as a requirement for employment in a job category, must hold such a certificate or diploma; or (c) persons who have completed an apprenticeship as a requirement for being certified by a union. The term "managerial" describes those jobs which primarily involve supervising other employees of the company. The term "technical" describes those jobs which involve an expertise or knowledge specific to the particular industry of the eligible company. Those jobs which are described by both "technical" and another category shall be classified as "technical", and by deleting the remainder of paragraph 3 of Section 5 (1) (c).

Section 5 (1) (i) of 307 KAR 1:030, administrative regulation proposed for the Kentucky Rural Economic Development Act Tax Credit Program, regarding the definition of "skilled" job be amended to read as follows:

"The number of managerial and technical jobs and skilled, semiskilled and unskilled jobs (based on the level of specialized training required to perform the particular job competently), created by the economic development project and the average hourly wage and average salary for each job category. For purposes of the foregoing sentence, the term "unskilled" describes those jobs which require no specialized training to perform the job competently. Likewise, "semiskilled" describes those jobs which require forty (40) hours or less training to perform the job competently and "skilled" describes those jobs that include (a) those possessing a certificate or degree from an accredited vo-tech school, college or university; (b) persons who have been independently licensed in a specific occupation, and who, as a requirement for employment in a job category, must hold such a certificate or diploma; or (c) persons who have completed an apprenticeship as a requirement for being certified by a union. The term "managerial" describes those jobs which primarily involve supervising other employees of the company. The term "technical" describes those jobs which involve an expertise or knowledge specific to the particular industry of the eligible company. Those jobs which are described by both "technical" and another category shall be classified as "technical", and by deleting the remainder of paragraph (i) of Section 5 (1).

(3) The following question was referred to the Committee by the Administrative Regulations Subcommittee: should KRS 154.22-010(9) be amended to include "limited liability companies" and "limited liability partnerships" in the definition of "eligible company" pursuant to KRS 154.22-010(9), and whether the Cabinet has authority to make said amendment by administrative regulation. The committee directed staff to work with Representative Riggs to draft clarifying legislation for introduction to the 1996 General Assembly.

## **ADMINISTRATIVE REGISTER - 845**

### **INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Meeting of August 24, 1995**

are attached hereto.

The following administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of August 24, 1995, having been referred to the Committee on August 8, 1995, pursuant to KRS 13A.290(6):

302 KAR 20:076E  
416 KAR 1:010 (&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 August 24, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

### **INTERIM JOINT COMMITTEE ON EDUCATION Meeting of September 7, 1995**

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of September 7, 1995, having been referred to the Committee on August 8, 1995, pursuant to KRS 13A.290(6):

11 KAR 4:040  
15 KAR 1:040  
702 KAR 7:081  
702 KAR 7:091  
704 KAR 3:470  
704 KAR 20:056

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 September 7, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any,





## ADMINISTRATIVE REGISTER - D1

### CUMULATIVE SUPPLEMENT

#### Locator Index - Effective Dates ..... D2

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 ..... D8

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 ..... D13

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 - D2

## 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 1:130E	1865	12-20-94
32 KAR 1:150E	2646	3-22-95
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
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
Replaced		8-24-95
500 KAR 11:001E	2430	3-15-95
Replaced		9-7-95
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
Replaced		9-7-95
500 KAR 11:080E	2439	2-28-95
Replaced		9-7-95
500 KAR 11:090E	2440	2-28-95
Replaced		9-7-95

500 KAR 11:100E	2441	2-28-95
Replaced	9-7-95	
600 KAR 5:010E	2973	5-11-95
902 KAR 14:070E	2442	3-1-95
902 KAR 14:080E	2444	3-1-95
902 KAR 14:090E	2450	3-1-95
904 KAR 3:050E	2454	2-17-95
904 KAR 3:060E	2458	2-17-95
905 KAR 7:250E	2461	2-17-95
907 KAR 1:013E	2974	5-12-95
907 KAR 1:585E	2665	3-21-95
909 KAR 1:080E	2667	4-14-95
909 KAR 1:090E	2980	5-2-95

### ORDINARY ADMINISTRATIVE REGULATIONS:

201 KAR 1:064	3088	8-10-95
201 KAR 11:400	3089	(See Volume 22)
201 KAR 30:140		
Amended	2731	8-10-95
501 KAR 6:020		
Amended	3067	8-10-95
501 KAR 6:130		
Amended	3069	8-10-95
704 KAR 20:010		
Repealed	3073	8-3-95
704 KAR 20:020		
Amended	3073	8-3-95
704 KAR 20:021	3100	8-3-95
907 KAR 1:025		
Amended	3079	(See Volume 22)

\*Statement of Consideration not filed by deadline (KRS 13A.280)

### VOLUME 22

**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)

9 KAR 1:021E	214	7-11-95
Expires		1-18-96
11 KAR 8:030E	215	7-12-95
32 KAR 1:160E	694	8-30-95
101 KAR 2:100E	217	7-14-95
101 KAR 3:010E	223	7-14-95
200 KAR 22:060E	20	6-15-95
301 KAR 2:225E	695	8-23-95
301 KAR 5:001E	697	9-14-95
301 KAR 5:010E	698	9-14-95
302 KAR 20:115E	569	7-28-95
415 KAR 1:114E	700	8-16-95

502 KAR 45:005E	703	8-30-95
502 KAR 45:015E	704	8-30-95
502 KAR 45:025E	705	8-30-95
502 KAR 45:035E	706	8-30-95
502 KAR 45:045E	707	8-30-95
502 KAR 45:055E	708	8-30-95
502 KAR 45:065E	709	8-30-95
502 KAR 45:075E	710	8-30-95
502 KAR 45:085E	711	8-30-95
502 KAR 45:145E	570	8-1-95
502 KAR 45:150E	712	8-30-95
702 KAR 3:245E	571	8-15-95
702 KAR 3:246E	573	8-15-95
780 KAR 2:140E	227	7-5-94
787 KAR 1:010E	229	6-22-95
787 KAR 1:020E	230	6-22-95
787 KAR 1:030E	230	6-22-95
787 KAR 1:040E	230	6-22-95



# ADMINISTRATIVE REGISTER - D3

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
787 KAR 1:050E	231	6-22-95	9 KAR 1:040		
787 KAR 1:060E	231	6-22-95	As Amended	273	
787 KAR 1:070E	232	6-22-95	As Amended	583	7-26-95
787 KAR 1:080E	232	6-22-95	11 KAR 4:040		
787 KAR 1:090E	233	6-22-95	Amended	97	
787 KAR 1:100E	234	6-22-95	As Amended	584	9-7-95
787 KAR 1:110E	234	6-22-95	11 KAR 12:060		
787 KAR 1:120E	237	6-22-95	As Amended	30	7-6-95
787 KAR 1:130E	237	6-22-95	11 KAR 12:070		
787 KAR 1:140E	237	6-22-95	As Amended	31	7-6-95
787 KAR 1:150E	238	6-22-95	15 KAR 1:040	125	
787 KAR 1:160E	239	6-22-95	As Amended	587	9-7-95
787 KAR 1:170E	239	6-22-95	31 KAR 4:100		
787 KAR 1:180E	240	6-22-95	As Amended	274	7-26-95
787 KAR 1:190E	241	6-22-95	31 KAR 4:110		
787 KAR 1:200E	241	6-22-95	As Amended	274	7-26-95
787 KAR 1:210E	242	6-22-95	32 KAR 2:210	814	
787 KAR 1:220E	242	6-22-95	103 KAR 16:190	127	
787 KAR 1:230E	243	6-22-95	Amended	761	
787 KAR 1:240E	243	6-22-95	105 KAR 1:210		
787 KAR 1:250E	244	6-22-95	Amended	775	
787 KAR 1:260E	244	6-22-95	105 KAR 1:215		
787 KAR 1:270E	245	6-22-95	Amended	777	
787 KAR 1:280E	245	6-22-95	106 KAR 1:091		
787 KAR 1:290E	245	6-22-95	Amended	606	
787 KAR 1:300E	246	6-22-95	106 KAR 1:131		
787 KAR 1:310E	246	6-22-95	Amended	609	
787 KAR 2:010E	247	6-22-95	200 KAR 2:006		
787 KAR 2:020E	248	6-22-95	Amended	779	
787 KAR 2:030E	248	6-22-95	200 KAR 15:010		
788 KAR 2:010E	249	6-22-95	Amended	101	
803 KAR 2:320E	252	6-30-95	As Amended	715	
803 KAR 2:403E	255	6-30-95	200 KAR 17:050		
803 KAR 2:425E	257	6-30-95	Amended	104	
803 KAR 2:500E	259	6-30-95	As Amended	589	8-24-95
804 KAR 4:320E	575	7-25-95	200 KAR 19:010		
815 KAR 8:040E	21	6-6-95	Recodified as 803 KAR 30:020		7-24-95
903 KAR 5:001E	713	8-28-95	200 KAR 20:010		
904 KAR 2:460E	576	8-7-95	As Amended	32	7-6-95
907 KAR 1:009E	261	6-30-95	200 KAR 22:020		
907 KAR 1:010E	262	6-30-95	As Amended	33	7-6-95
907 KAR 1:014E	264	6-30-95	200 KAR 22:030	412	
Withdrawn		8-10-95	200 KAR 22:040	413	
907 KAR 1:015E	266	6-30-95	200 KAR 22:050	414	
Withdrawn		8-10-95	200 KAR 22:060	415	
907 KAR 1:060E	267	6-30-95	200 KAR 22:070	417	
907 KAR 1:061E	269	6-30-95	200 KAR 22:080	815	
909 KAR 1:021E	22	6-14-95	201 KAR 1:300		
909 KAR 1:055E	23	6-14-95	As Amended	275	8-10-95
909 KAR 1:100E	578	8-15-95	201 KAR 8:220		
			Amended	107	8-16-95
			201 KAR 8:277		
			Amended	108	8-16-95
			201 KAR 11:400		
			As Amended	717	
			201 KAR 12:082		
			Amended	613	
			201 KAR 20:057		
			Amended	305	
			201 KAR 20:162		
			Amended	306	
			201 KAR 20:240		
			Amended	109	
			Withdrawn		8-16-95
ORDINARY ADMINISTRATIVE REGULATIONS:					
9 KAR 1:010					
As Amended	273				
As Amended	583	7-26-95			
9 KAR 1:015					
As Amended	25	7-6-95			
9 KAR 1:020					
Repealed	214	7-11-95			
9 KAR 1:030					
As Amended	26	7-6-95			
9 KAR 1:035					
As Amended	30	7-6-95			



# ADMINISTRATIVE REGISTER - D4

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
201 KAR 20:410	418		401 KAR 100:050	137	
201 KAR 22:070			Amended	598	
Amended	615		416 KAR 1:010	142	8-24-95
201 KAR 30:050			418 KAR 1:010		
As Amended	277	8-10-95	Amended	92	7-12-95
201 KAR 30:120			418 KAR 1:020		
As Amended	279	8-10-95	Amended	92	7-12-95
201 KAR 32:010	419		418 KAR 1:030		
201 KAR 32:020	420		Amended	93	7-12-95
201 KAR 32:030	421		418 KAR 1:040		
300 KAR 1:010	635		Amended	94	7-12-95
301 KAR 1:015			418 KAR 1:070		
Amended	308		Amended	96	7-12-95
As Amended	718		500 KAR 11:001	146	9-7-95
301 KAR 1:085			500 KAR 11:030	436	
Amended	309		500 KAR 11:040	439	
301 KAR 1:201			500 KAR 11:050	441	
Amended	312		500 KAR 11:060	442	
301 KAR 2:044			500 KAR 11:070	147	9-7-95
Repealed	695	8-23-95	500 KAR 11:080	148	9-7-95
301 KAR 6:050	816		500 KAR 11:090	149	9-7-95
301 KAR 10:010			500 KAR 11:100	150	9-7-95
Repealed	92	7-12-95	501 KAR 2:020		
302 KAR 15:010			Amended	340	
As Amended	33	6-14-95	501 KAR 2:040		
302 KAR 20:076	422		Amended	341	
302 KAR 31:015			501 KAR 2:050		
As Amended	36	6-14-95	Amended	342	
302 KAR 100:010	423		501 KAR 2:060		
302 KAR 100:020	424		Amended	343	
307 KAR 1:030	133		501 KAR 6:020		
As Amended	591		Amended	616	
As Amended	719	8-17-95	Amended	783	
307 KAR 2:010			501 KAR 6:050		
As Amended	39	7-6-95	Amended	785	
307 KAR 3:010			501 KAR 6:080		
As Amended	40	7-6-95	Amended	344	
307 KAR 4:010	135		501 KAR 6:120		
As Amended	593		As Amended	42	7-6-95
As Amended	720	8-17-95	501 KAR 6:130		
401 KAR 5:030			Amended	619	
Amended	89		501 KAR 6:140		
As Amended	280	7-12-95	As Amended	43	7-6-95
401 KAR 42:005	427		501 KAR 6:170	443	
401 KAR 42:011			600 KAR 1:120	821	
Amended	315		600 KAR 5:010		
401 KAR 42:020			Amended	302	
Amended	318		601 KAR 9:074		
401 KAR 42:040			Amended	345	
Amended	321		601 KAR 9:220	824	
401 KAR 42:060			601 KAR 12:070	444	
Amended	323		603 KAR 5:070		
401 KAR 42:070			Amended	620	
Amended	327		603 KAR 5:071		
401 KAR 42:071	432		Amended	624	
401 KAR 42:080			603 KAR 5:072		
Amended	331		Amended	348	
401 KAR 42:090			603 KAR 5:075		
Amended	335		Amended	786	
401 KAR 42:200			603 KAR 5:110		
Amended	337		Amended	350	
401 KAR 50:031	817		603 KAR 5:115		
401 KAR 50:065	434		Amended	789	



# ADMINISTRATIVE REGISTER - D5

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
603 KAR 5:301			780 KAR 4:010		
Amended	791		Amended	369	
702 KAR 1:140			As Amended	731	
As Amended	45	7-6-95	780 KAR 4:020		
702 KAR 3:280	637		Amended	371	
702 KAR 3:300	638		As Amended	732	
702 KAR 7:010			780 KAR 4:030	447	
Amended	626		As Amended	733	
702 KAR 7:050			780 KAR 4:040	448	
As Amended	45	7-6-95	As Amended	733	
702 KAR 7:080			780 KAR 4:050	448	
Repealed	151	9-7-95	As Amended	734	
702 KAR 7:081	151	9-7-95	780 KAR 4:060	449	
702 KAR 7:090			As Amended	734	
Repealed	152	9-7-95	780 KAR 5:010		
702 KAR 7:091	152	9-7-95	Amended	372	
704 KAR 3:470	152	9-7-95	As Amended	734	
704 KAR 20:055			780 KAR 5:020		
Repealed	153	9-7-95	Amended	373	
704 KAR 20:056	153	9-7-95	As Amended	734	
704 KAR 20:305			780 KAR 5:030		
As Amended	283	8-3-95	Amended	374	
735 KAR 1:010			As Amended	735	
As Amended	48	7-6-95	780 KAR 5:040		
735 KAR 1:020			Amended	375	
As Amended	50	7-6-95	As Amended	735	
750 KAR 1:010			780 KAR 5:050		
Amended	627		Amended	375	
780 KAR 2:010			As Amended	735	
Amended	353		780 KAR 7:010		
As Amended	722		Amended	376	
780 KAR 2:020			As Amended	735	
Amended	354		780 KAR 7:020		
As Amended	722		Amended	378	
780 KAR 2:021	445		As Amended	737	
780 KAR 2:030			780 KAR 7:030		
Amended	355		Amended	379	
As Amended	723		As Amended	738	
780 KAR 2:035	446		780 KAR 7:032	450	
As Amended	724		As Amended	738	
780 KAR 2:040			780 KAR 7:036	451	
Amended	357		As Amended	739	
As Amended	724		780 KAR 7:040		
780 KAR 2:060			Amended	380	
Amended	358		As Amended	739	
As Amended	725		780 KAR 7:060		
780 KAR 2:090			Amended	381	
Amended	359		As Amended	739	
As Amended	726		780 KAR 7:070		
780 KAR 2:100			Amended	382	
Amended	361		As Amended	740	
As Amended	727		780 KAR 8:011	452	
780 KAR 2:110			As Amended	740	
Amended	363		780 KAR 9:131	825	
780 KAR 2:120			781 KAR 1:040		
Amended	364		Amended	111	
As Amended	728		785 KAR 1:010	639	
780 KAR 2:130			785 KAR 1:020	641	
Amended	365		785 KAR 1:030	642	
As Amended	728		785 KAR 1:040	643	
780 KAR 2:140			785 KAR 1:050	646	
Amended	367		785 KAR 1:060	648	
As Amended	730		785 KAR 1:070	650	
			785 KAR 1:080	651	



# ADMINISTRATIVE REGISTER - D6

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
785 KAR 1:090	652		807 KAR 5:058		
785 KAR 1:100	653		As Amended	287	7-21-95
785 KAR 1:110	654		815 KAR 7:100		
787 KAR 1:010	452		Amended	113	9-7-95
787 KAR 1:020	454		815 KAR 8:010		
787 KAR 1:030	455		Amended	792	
787 KAR 1:040	456		815 KAR 8:020		
787 KAR 1:050	457		Amended	794	
787 KAR 1:060	459		815 KAR 8:040	505	
787 KAR 1:070	460		815 KAR 10:050	506	
787 KAR 1:080	461		815 KAR 20:020		
787 KAR 1:090	463		Amended	796	
787 KAR 1:100	465		815 KAR 20:078		
787 KAR 1:110	466		Amended	799	
787 KAR 1:120	470		815 KAR 20:110		
787 KAR 1:130	471		Amended	116	9-7-95
787 KAR 1:140	472		815 KAR 20:120		
787 KAR 1:150	473		Amended	800	
787 KAR 1:160	475		815 KAR 35:015		
787 KAR 1:170	476		Amended	117	
787 KAR 1:180	478		As Amended	594	9-7-95
787 KAR 1:190	479		815 KAR 35:030		
787 KAR 1:200	481		Amended	630	
787 KAR 1:210	482		902 KAR 14:070	507	
787 KAR 1:220	483		902 KAR 14:080	510	
787 KAR 1:230	484		Amended	767	
787 KAR 1:240	486		902 KAR 14:090	517	
787 KAR 1:250	487		902 KAR 20:004		
787 KAR 1:260	488		Repealed	81	6-21-95
787 KAR 1:270	490		902 KAR 20:126		
787 KAR 1:280	491		Repealed	87	6-21-95
787 KAR 1:290	492		902 KAR 20:270		
787 KAR 1:300	493		Amended	383	
787 KAR 1:310	495		902 KAR 55:095		
787 KAR 2:010	496		As Amended	291	7-26-95
787 KAR 2:020	498		902 KAR 115:020		
787 KAR 2:030	499		As Amended	292	7-26-95
788 KAR 2:010	501		903 KAR 1:010		
803 KAR 25:020			Repealed	713	8-28-95
Repealed	52	6-15-95	903 KAR 5:010		
803 KAR 25:021			Repealed	713	8-28-95
As Amended	52	6-15-95	903 KAR 5:020		
803 KAR 25:025			Repealed	713	8-28-95
Repealed	54	6-15-95	903 KAR 5:030		
803 KAR 25:026			Repealed	713	8-28-95
As Amended	54	6-15-95	903 KAR 5:050		
803 KAR 25:150	656		Repealed	713	8-28-95
803 KAR 25:170	658		903 KAR 5:060		
803 KAR 25:190			Repealed	713	8-28-95
Amended	303		903 KAR 5:070		
As Amended	740		Repealed	713	8-28-95
803 KAR 30:010	826		903 KAR 5:080		
803 KAR 30:020			Repealed	713	8-28-95
Recodified from 200 KAR 19:010		7-24-95	903 KAR 5:090		
806 KAR 9:220			Repealed	713	8-28-95
As Amended	58	7-6-95	903 KAR 5:100		
Reprinted	675	7-6-95	Repealed	713	8-28-95
806 KAR 9:230			903 KAR 5:110		
As Amended	286	8-10-95	Repealed	713	8-28-95
806 KAR 47:010	154	9-7-95	903 KAR 5:130		
806 KAR 47:020	155	9-7-95	Repealed	713	8-28-95
806 KAR 47:030	157	9-7-95	903 KAR 5:140		
807 KAR 5:013	503		Repealed	713	8-28-95



# ADMINISTRATIVE REGISTER - D7

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
903 KAR 5:150			904 KAR 2:400		
Repealed	713	8-28-95	As Amended	60	6-21-95
903 KAR 5:160			904 KAR 2:410		
Repealed	713	8-28-95	As Amended	61	6-21-95
903 KAR 5:170			904 KAR 3:010		
Repealed	713	8-28-95	Amended	809	
903 KAR 5:180			904 KAR 3:020		
Repealed	713	8-28-95	Amended	395	
903 KAR 5:220			904 KAR 3:050		
Repealed	713	8-28-95	Amended	399	
903 KAR 5:230			904 KAR 3:060		
Repealed	713	8-28-95	Amended	403	
903 KAR 5:250			As Amended	746	
Repealed	713	8-28-95	904 KAR 3:070		
903 KAR 5:270			Amended	407	
Repealed	713	8-28-95	904 KAR 3:100	660	
903 KAR 5:290			905 KAR 2:140		
Repealed	713	8-28-95	As Amended	65	6-21-95
903 KAR 5:300			905 KAR 7:250	520	
Repealed	713	8-28-95	907 KAR 1:025		
903 KAR 5:310			As Amended	749	
Repealed	713	8-28-95	907 KAR 1:420		
903 KAR 5:320			Repealed	267	6-30-95
Repealed	713	8-28-95	907 KAR 1:585		
903 KAR 5:330			Amended	632	
Repealed	713	8-28-95	907 KAR 1:600		
903 KAR 5:340			As Amended	293	6-21-95
Repealed	713	8-28-95	907 KAR 1:605		
903 KAR 5:350			As Amended	294	7-26-95
Repealed	713	8-28-95	907 KAR 1:610		
903 KAR 5:360			As Amended	294	7-26-95
Repealed	713	8-28-95	907 KAR 1:640		
903 KAR 5:370			As Amended	296	7-26-95
Repealed	713	8-28-95	907 KAR 1:650		
903 KAR 5:380			As Amended	298	7-26-95
Repealed	713	8-28-95	907 KAR 1:660		
903 KAR 5:392			As Amended	300	7-26-95
Repealed	713	8-28-95	907 KAR 1:671		
903 KAR 6:010			As Amended	73	6-21-95
Repealed	713	8-28-95	908 KAR 1:320	831	
903 KAR 6:020			909 KAR 1:021	662	
Recodified as 904 KAR 2:118		8-28-95	909 KAR 1:040		
903 KAR 6:040			As Amended	81	6-21-95
Repealed	713	8-28-95	909 KAR 1:055	662	
903 KAR 6:050			909 KAR 1:060		
Repealed	713	8-28-95	As Amended	87	6-21-95
903 KAR 6:060			909 KAR 1:080	158	
Repealed	713	8-28-95	Amended	599	
903 KAR 6:070			909 KAR 1:090	159	
Repealed	713	8-28-95	Amended	600	
904 KAR 2:001			As Amended	755	
Amended	807				
904 KAR 2:006					
Amended	388				
As Amended	741				
904 KAR 2:046					
Amended	121	8-16-95			
904 KAR 2:050					
Amended	122	8-16-95			
904 KAR 2:060					
Amended	393				
904 KAR 2:118					
Recodified from 903 KAR 6:020		8-28-95			



# ADMINISTRATIVE REGISTER - D8

KRS SECTION	REGULATION	KRS SECTION	REGULATION
KRS INDEX			
11A.080	9 KAR 1:021E	150.110	301 KAR 1:085
16.040	502 KAR 45:005E	150.170	301 KAR 1:085
	502 KAR 45:015E		301 KAR 1:201
	502 KAR 45:025E		301 KAR 2:225E
	502 KAR 45:035E	150.175	301 KAR 1:085
	502 KAR 45:085E	150.180	301 KAR 1:085
	502 KAR 45:145E	150.190	301 KAR 1:085
	502 KAR 45:150E	150.195	301 KAR 5:001E
16.050	502 KAR 45:005E		301 KAR 5:010E
	502 KAR 45:015E	150.300	301 KAR 2:225E
	502 KAR 45:025E	150.320	301 KAR 2:225E
	502 KAR 45:035E	150.330	301 KAR 2:225E
	502 KAR 45:045E	150.340	301 KAR 2:225E
	502 KAR 45:055E	150.360	301 KAR 2:225E
	502 KAR 45:065E	150.470	301 KAR 1:201
	502 KAR 45:075E	150.520	301 KAR 1:085
	502 KAR 45:145E	150.525	301 KAR 1:085
16.080	502 KAR 45:145E	150.603	301 KAR 2:225E
16.505-16.652	105 KAR 1:210	150.620	301 KAR 1:015
	105 KAR 1:215	150.625	301 KAR 1:015
18A.030	101 KAR 2:100E	150.990	301 KAR 1:015
18A.110	101 KAR 2:100E		301 KAR 1:085
18A.155	101 KAR 3:010E		301 KAR 1:201
18A.195	101 KAR 2:100E	Chapter 151B	780 KAR 2:021
18A.430	200 KAR 22:030		780 KAR 7:036
	200 KAR 22:040		780 KAR 8:011
	200 KAR 22:050		780 KAR 9:131
	200 KAR 22:060	151B.023	785 KAR 1:010
	200 KAR 22:070		785 KAR 1:020
	200 KAR 22:080		785 KAR 1:030
39.800-39.990	106 KAR 1:091		785 KAR 1:040
	106 KAR 1:131		785 KAR 1:050
42.455	603 KAR 5:115		785 KAR 1:060
44.045	600 KAR 1:120		785 KAR 1:070
44.060	200 KAR 2:006		785 KAR 1:080
45.101	200 KAR 2:006		785 KAR 1:090
61.394	101 KAR 2:100E		785 KAR 1:100
	101 KAR 3:010E	151B.025	780 KAR 2:010
62.510-61.705	105 KAR 1:210		780 KAR 2:020
	105 KAR 1:215		780 KAR 2:030
65.944	702 KAR 3:300		780 KAR 2:035
65.946	702 KAR 3:300		780 KAR 2:040
78.510-78.852	105 KAR 1:210		780 KAR 2:060
	105 KAR 1:215		780 KAR 2:090
Chapter 103	200 KAR 15:010		780 KAR 2:100
121.140	32 KAR 2:210		780 KAR 2:110
121A.010	32 KAR 1:160E		780 KAR 2:120
121A.050	32 KAR 1:160E		780 KAR 2:130
131.570	787 KAR 1:110		780 KAR 2:140
138.655-138.725	601 KAR 9:074		780 KAR 4:010
141.065	787 KAR 2:030		780 KAR 4:030
141.120	103 KAR 16:190	151B.030	780 KAR 2:010
141.200	103 KAR 16:190		780 KAR 2:020
146.080-146.121	416 KAR 1:010	151B.110	780 KAR 2:010
148.522	300 KAR 1:010		780 KAR 2:020
148.525	300 KAR 1:010		780 KAR 2:030
150.010	301 KAR 1:015		780 KAR 2:035
	301 KAR 1:085		780 KAR 2:040
	301 KAR 1:201		780 KAR 2:060
150.015	301 KAR 2:225E		780 KAR 2:090
150.025	301 KAR 1:085		780 KAR 2:100
	301 KAR 2:225E		780 KAR 2:110
150.090	301 KAR 1:015		780 KAR 2:120



# ADMINISTRATIVE REGISTER - D9

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	780 KAR 2:130	157.390	704 KAR 3:470
	780 KAR 2:140	Chapter 158	905 KAR 7:250
	780 KAR 4:020	158.060	702 KAR 7:010
	780 KAR 4:050	158.070	702 KAR 7:010
	780 KAR 4:060	160.345	702 KAR 3:245E
	780 KAR 5:010		702 KAR 3:246E
	780 KAR 5:020	Chapter 161	905 KAR 7:250
	780 KAR 5:030	161.011	785 KAR 1:110
	780 KAR 5:040	161.020	704 KAR 20:056
	780 KAR 5:050	161.028	704 KAR 20:056
	780 KAR 7:010	161.030	704 KAR 20:056
	780 KAR 7:020	161.044	702 KAR 7:091
	780 KAR 7:030	161.180	702 KAR 7:091
	780 KAR 7:032	164.740	11 KAR 4:040
	780 KAR 7:060	164.744	11 KAR 8:030E
	780 KAR 7:070	164.748	11 KAR 4:040
	785 KAR 1:010	164.753	11 KAR 8:030E
	785 KAR 1:020	164A.040	15 KAR 1:040
	785 KAR 1:030	164A.050	15 KAR 1:040
	785 KAR 1:040	164A.060	15 KAR 1:040
	785 KAR 1:050	164A.065	15 KAR 1:040
	785 KAR 1:060	177.977	603 KAR 5:115
	785 KAR 1:070	177.9771	603 KAR 5:115
	785 KAR 1:080	Chapter 186	601 KAR 9:220
	785 KAR 1:090	186.065	600 KAR 1:120
	785 KAR 1:100	186.570	601 KAR 12:070
	785 KAR 1:110	189.221	603 KAR 5:071
151B.125	785 KAR 1:010	189.222	603 KAR 5:070
	785 KAR 1:020		603 KAR 5:071
	785 KAR 1:060		603 KAR 5:075
151B.145	785 KAR 1:110		603 KAR 5:301
	780 KAR 2:010	189.231	603 KAR 5:072
	780 KAR 2:100	189.265	603 KAR 5:071
	780 KAR 4:010	189.270	603 KAR 5:075
	780 KAR 4:040		603 KAR 5:110
	780 KAR 7:040	Chapter 190	601 KAR 9:220
	785 KAR 1:030	194.030	787 KAR 1:310
	785 KAR 1:040		787 KAR 2:010
	785 KAR 1:060		788 KAR 2:010
	785 KAR 1:070	194.050	904 KAR 2:460E
	785 KAR 1:080		904 KAR 3:010
	785 KAR 1:090		904 KAR 3:020
151B.150	780 KAR 2:130		904 KAR 3:070
	780 KAR 5:010		904 KAR 3:100
	780 KAR 5:020	195.020	787 KAR 2:020
	780 KAR 5:030		903 KAR 5:001E
	780 KAR 5:040	195.040	787 KAR 2:020
	780 KAR 5:050	Chapter 196	501 KAR 6:020
	780 KAR 7:010		501 KAR 6:050
	780 KAR 7:020		501 KAR 6:080
	780 KAR 7:030		501 KAR 6:130
	780 KAR 7:032		501 KAR 6:170
	780 KAR 7:040	196.439	501 KAR 2:020
	780 KAR 7:060		501 KAR 2:040
	780 KAR 7:070		501 KAR 2:050
	785 KAR 1:060		501 KAR 2:060
151B.165	780 KAR 2:140	Chapter 197	501 KAR 6:020
151B.175	780 KAR 2:110		501 KAR 6:050
151B.190	781 KAR 1:040		501 KAR 6:080
154.22-010-154.22-070	307 KAR 1:030		501 KAR 6:130
154.28-010-154.28-090	307 KAR 4:010		501 KAR 6:170
156.070	702 KAR 3:280	197.020	501 KAR 2:020
	702 KAR 3:300		501 KAR 2:040
	702 KAR 7:081		501 KAR 2:050
	702 KAR 7:091		501 KAR 2:060
Chapter 157	750 KAR 1:010	Chapter 198B	815 KAR 7:100



# ADMINISTRATIVE REGISTER - D10

KRS SECTION	REGULATION	KRS SECTION	REGULATION
198B.650-198B.689	815 KAR 10:050	224.46	401 KAR 42:060
198B.658	815 KAR 8:010		401 KAR 42:070
198B.666	815 KAR 8:020		401 KAR 42:071
205.010	815 KAR 8:040		401 KAR 42:080
205.170	815 KAR 8:040		401 KAR 100:050
205.200	904 KAR 2:006	224.60	401 KAR 42:005
205.220	904 KAR 2:060		401 KAR 42:011
205.245	904 KAR 2:006		401 KAR 42:020
205.520	904 KAR 2:046		401 KAR 42:040
	904 KAR 2:050		401 KAR 42:060
	904 KAR 2:046		401 KAR 42:070
	907 KAR 1:009E		401 KAR 42:071
	907 KAR 1:014E		401 KAR 42:080
	907 KAR 1:015E		401 KAR 42:090
	907 KAR 1:060E		401 KAR 42:200
	907 KAR 1:061E	224.60-110	415 KAR 1:114E
	907 KAR 1:585	224.60-130	415 KAR 1:114E
205.550	907 KAR 1:010E	224.71-100-224.71-140	416 KAR 1:010
205.710-205.800	904 KAR 2:001	Chapter 224A	200 KAR 17:050
211.905-211.958	902 KAR 14:070	Chapter 227	815 KAR 10:050
	902 KAR 14:080		815 KAR 35:015
216B.010-216B.130	902 KAR 14:090	227.450-227.500	815 KAR 35:030
	902 KAR 14:070	235.010	301 KAR 6:050
	902 KAR 14:080	235.200	301 KAR 6:050
	902 KAR 14:090	235.280	301 KAR 6:050
	909 KAR 1:021	235.310	301 KAR 6:050
216B.010-216B.131	909 KAR 1:055	235.320	301 KAR 6:050
216B.455	902 KAR 20:270	238.500-238.995	500 KAR 11:001
216B.990	909 KAR 1:055	238.505	500 KAR 11:080
	902 KAR 14:070		500 KAR 11:090
	902 KAR 14:080	238.510	500 KAR 11:100
	902 KAR 14:090	238.535	500 KAR 11:070
	902 KAR 20:270	238.540	500 KAR 11:060
	909 KAR 1:055	238.545	500 KAR 11:030
222.271	908 KAR 1:320		500 KAR 11:040
224.01	401 KAR 42:005		500 KAR 11:050
	401 KAR 42:060	243.030	804 KAR 4:320E
	401 KAR 42:070	Chapter 257	302 KAR 20:076
	401 KAR 42:071	257.030	302 KAR 20:115E
	401 KAR 42:080	Chapter 262	416 KAR 1:010
	401 KAR 100:050	262.902	302 KAR 100:010
224.10	401 KAR 42:005		302 KAR 100:020
	401 KAR 42:011	262.904	302 KAR 100:010
	401 KAR 42:020		302 KAR 100:020
	401 KAR 42:040	262.908	302 KAR 100:010
	401 KAR 42:060		302 KAR 100:020
	401 KAR 42:070	Chapter 278	807 KAR 5:013
	401 KAR 42:071	Chapter 281	603 KAR 5:072
	401 KAR 42:080	281.735	603 KAR 5:071
	401 KAR 42:090	Chapter 304.17A	909 KAR 1:080
	401 KAR 42:200		909 KAR 1:100E
	401 KAR 100:050	304.17A-130	909 KAR 1:090
224.10-100	401 KAR 50:031	304.47-050	806 KAR 47:010
	401 KAR 50:065		806 KAR 47:020
224.20-100	401 KAR 50:065	304.47-080	806 KAR 47:010
224.20-110	401 KAR 50:065		806 KAR 47:030
224.20-120	401 KAR 50:031	313.050	201 KAR 8:200
224.40	401 KAR 42:060	313.060	201 KAR 8:220
	401 KAR 42:070	313.100	201 KAR 8:220
	401 KAR 42:071	313.270	201 KAR 8:277
	401 KAR 42:080	314.011	201 KAR 20:057
224.43	401 KAR 42:060		201 KAR 20:162
	401 KAR 42:070	314.031	201 KAR 20:162
	401 KAR 42:071	314.041	201 KAR 20:240
	401 KAR 42:080	314.042	201 KAR 20:240
	401 KAR 100:050	314.051	201 KAR 20:240



# ADMINISTRATIVE REGISTER - D11

KRS SECTION	REGULATION	KRS SECTION	REGULATION
314.071	201 KAR 20:162		787 KAR 1:230
	201 KAR 20:240	341.500	787 KAR 1:140
314.073	201 KAR 20:240	341.510	787 KAR 1:140
314.091	201 KAR 20:162	341.530	787 KAR 1:060
314.131	201 KAR 20:410		787 KAR 1:070
314.161	201 KAR 20:162	341.540	787 KAR 1:300
	201 KAR 20:240	341.820	787 KAR 1:250
314.193	201 KAR 20:057	Chapter 342	803 KAR 25:150
314.991	201 KAR 20:162		803 KAR 25:170
317A.060	201 KAR 12:082		803 KAR 30:010
317A.090	201 KAR 12:082	344.030	101 KAR 2:100E
Chapter 318	815 KAR 20:020		105 KAR 1:210
	815 KAR 20:078	403.210-403.240	904 KAR 2:001
	815 KAR 20:110	405.520	904 KAR 2:001
	815 KAR 20:120	407.010-407.480	904 KAR 2:001
327.060	201 KAR 22:070	Chapter 439	501 KAR 6:020
335.330	201 KAR 32:010		501 KAR 6:050
	201 KAR 32:020		501 KAR 6:080
	201 KAR 32:030		501 KAR 6:130
Chapter 338	803 KAR 2:320E		501 KAR 6:170
	803 KAR 2:403E	532.100	501 KAR 2:020
	803 KAR 2:425E		501 KAR 2:040
	803 KAR 2:500E		501 KAR 2:050
Chapter 340	903 KAR 5:001E		501 KAR 2:060
341.030	787 KAR 1:170	533.200	785 KAR 1:100
341.050	787 KAR 1:270	533.210	785 KAR 1:100
341.055	787 KAR 1:270	Chapter 605	905 KAR 7:250
341.070	787 KAR 1:260	605.115	702 KAR 3:280
	787 KAR 1:290	Chapter 610	905 KAR 7:250
	787 KAR 1:300	Chapter 630	905 KAR 7:250
341.080	787 KAR 1:100	Chapter 635	905 KAR 7:250
341.115	787 KAR 1:020	Chapter 640	905 KAR 7:250
	787 KAR 1:040	Chapter 645	905 KAR 7:250
	787 KAR 1:050	7 CFR	904 KAR 3:010
	787 KAR 1:120		904 KAR 3:020
	787 KAR 1:160		904 KAR 3:050
	787 KAR 1:180		904 KAR 3:070
	787 KAR 1:240		904 KAR 3:100
	903 KAR 5:001E	23 CFR	603 KAR 5:070
341.145	787 KAR 1:150		603 KAR 5:071
341.190	787 KAR 1:010	26 CFR	904 KAR 3:050
	787 KAR 1:220	29 CFR	105 KAR 1:210
341.250	787 KAR 1:260		803 KAR 2:320E
341.260	787 KAR 1:030	31 CFR	904 KAR 3:050
341.262	787 KAR 1:220	34 CFR	11 KAR 4:040
	787 KAR 1:230		15 KAR 1:040
341.270	787 KAR 1:210		781 KAR 1:040
341.272	787 KAR 1:290	40 CFR	401 KAR 42:005
341.300	787 KAR 1:030		401 KAR 42:011
	787 KAR 1:230		401 KAR 42:020
341.350	787 KAR 1:090		401 KAR 42:040
	787 KAR 1:310		401 KAR 42:060
341.360	787 KAR 1:080		401 KAR 42:070
341.370	787 KAR 1:060		401 KAR 42:071
	787 KAR 1:070		401 KAR 42:080
	787 KAR 1:240		401 KAR 42:090
341.380	787 KAR 1:090		401 KAR 50:065
	787 KAR 1:150		401 KAR 100:050
	787 KAR 1:200	45 CFR	904 KAR 2:001
341.390	787 KAR 1:280		904 KAR 2:006
341.410	787 KAR 1:130		904 KAR 2:046
341.415	787 KAR 1:190		904 KAR 2:050
341.430	787 KAR 1:110		904 KAR 2:060
	787 KAR 1:230	56 CFR	904 KAR 3:050
341.440	787 KAR 1:110	57 CFR	904 KAR 3:050
341.450	787 KAR 1:110	7 USC	904 KAR 3:010

# ADMINISTRATIVE REGISTER - D12

KRS SECTION	REGULATION	KRS SECTION	REGULATION
15 USC	904 KAR 2:001		
20 USC	15 KAR 1:040		
	785 KAR 1:040		
	785 KAR 1:050		
29 USC	781 KAR 1:040		
31 USC	904 KAR 2:001		
42 USC	105 KAR 1:210		
	106 KAR 1:091		
	401 KAR 42:005		
	401 KAR 42:011		
	401 KAR 42:020		
	401 KAR 42:040		
	401 KAR 42:060		
	401 KAR 42:070		
	401 KAR 42:071		
	401 KAR 42:080		
	401 KAR 42:090		
	401 KAR 50:031		
	401 KAR 50:065		
	904 KAR 2:460E		
1994 Acts c. 163	11 KAR 8:030E		
PL 101-624	904 KAR 3:100		
PL 103-3	101 KAR 2:100E		
	101 KAR 3:010E		
PL 103-66	904 KAR 3:010		
	904 KAR 3:020		
	904 KAR 3:050		
Ex. Order 93-560	600 KAR 1:120		



# ADMINISTRATIVE REGISTER - D13

## SUBJECT INDEX

### ADULT AND TECHNICAL EDUCATION

#### Adult Education

Repealer; 780 KAR 9:131

#### Facilities, Equipment of KY TECH System

Area technology center standards; 780 KAR 7:020

Corrections education center standards; 780 KAR 7:032

Definitions; 780 KAR 7:010

Equipment insurance; 780 KAR 7:070

Equipment inventory; 780 KAR 7:060

Facility maintenance; 780 KAR 7:040

Regional technology center standards; 780 KAR 7:030

Repealer; 780 KAR 7:036

#### Instructional Programs

Certificate requirements for students; 780 KAR 4:050

Diploma requirements, postsecondary students; 780 KAR 4:020

General standards; 780 KAR 4:010

Kentucky TECH guarantee; 780 KAR 4:060

Postsecondary program standards; 780 KAR 4:040

Secondary program standards; 780 KAR 4:030

#### Management of KY TECH System

Academic progress standard, postsecondary students; 780 KAR 2:120

Administration of schools; 780 KAR 2:010

Admission standards, postsecondary students; 780 KAR 2:130

Advisory boards, committees, serving postsecondary students; 780 KAR 2:035

Appeals process; 780 KAR 2:020

Attendance policies, postsecondary students; 780 KAR 2:100

Live work projects; 780 KAR 2:040

Postsecondary admission priorities; 780 KAR 2:090

Repealer; 780 KAR 2:021

Steering, advisory committees serving secondary students; 780 KAR 2:030

Student medical, accident insurance; 780 KAR 2:110

Suspension, expulsion of students; 780 KAR 2:060

Tuition, fees; 780 KAR 2:140

#### Veterans' Approval Agency

Apprenticeship, OJT course approval; 780 KAR 5:020

Approval denial or revocation; 780 KAR 5:040

Inspection, supervision; 780 KAR 5:050

Institutional courses approval; 780 KAR 5:010

Revisions, amendments approval; 780 KAR 5:030

#### Vocational and Teachers Education

Repealer; 780 KAR 8:011

### ADULT EDUCATION AND LITERACY

Eighth grade equivalency certificate; 785 KAR 1:030

English literacy program application approval under Adult Education Act; 785 KAR 1:060

Federal grant approval under Adult Education Act; 785 KAR 1:040

High school equivalency diploma; 785 KAR 1:020

Instruction provisions for persons sentenced by court to participate in educational program; 785 KAR 1:100

Migrant farmworker, immigrant education application approval under Adult Education Act; 785 KAR 1:070

Program reporting requirements; 785 KAR 1:080

Satisfactory progress qualifications through GED program; 785 KAR 1:110

Special experimental demonstration project and adult education teacher training applications approval under Adult Education Act; 785 KAR 1:050

Testing program; 785 KAR 1:010

Workplace literacy program application approval under Adult Education Act; 785 KAR 1:090

### AGRICULTURAL CONSERVATION EASEMENT CORPORATION

Determination of purchasing priority; 302 KAR 100:010

Procedures for purchasing; 302 KAR 100:020

### AGRICULTURE

Agricultural Conservation Easement Corporation; 302 KAR Chapter 100

Livestock sanitation; 302 KAR Chapter 20

### AIR QUALITY

General Administrative Procedures

Conformity of general federal actions; 401 KAR 50:065

Inherent physical limitations; 401 KAR 50:031

### ALCOHOL BEVERAGE CONTROL

Licensing

Special temporary distilled spirits, wine auction license; 804 KAR 4:320E

### AMBULANCE SERVICE

(See Health Services)

### BUILDING CODE

Kentucky building code; 815 KAR 7:100

### CHARITABLE GAMING

Bingo standards; 500 KAR 11:040

Definitions; 500 KAR 11:001

Division employees prohibited from playing; 500 KAR 11:100

Exempt activities; 500 KAR 11:070

Raffle standards; 500 KAR 11:050

Special charity fundraising event; 500 KAR 11:080

Special limited charitable games; 500 KAR 11:090

Ticket standards; 500 KAR 11:030

Tipping prohibited; 500 KAR 11:060

### CLASS D FELONS

(See Corrections)

### CORRECTIONS

Class D Felons

Definitions; 501 KAR 2:020

Housing procedures; 501 KAR 2:060

Transfer requests; 501 KAR 2:050

Waivers; 501 KAR 2:040

Office of the Secretary

Department manuals; 501 KAR 6:080

Department policies, procedures; 501 KAR 6:020

Green River Correctional Complex; 501 KAR 6:170

Luther Luckett Correctional Complex; 501 KAR 6:050

Western Kentucky Correctional Complex; 501 KAR 6:130

### COSMETOLOGISTS

(See Hairdressers and Cosmetologists)

### DENTISTRY

Clinical examination for licensure; 201 KAR 8:220

Examination for licensure of dental hygienists; 201 KAR 8:227

### DISASTER, EMERGENCY SERVICES

(See Military Affairs)

### DISTRICT SUPPORT SERVICES (EDUCATION)

School Administration, Finance

School council allocation formula, KETS district administrative system chart of accounts; 702 KAR 3:246E



## ADMINISTRATIVE REGISTER - D14

School council allocation formula, Uniform school financial accounting system; 702 KAR 3:245E  
School district Medicaid providers; 702 KAR 3:280  
School district lease agreements, approval 702 KAR 3:300  
School Terms, Attendance, Operation  
Repealer; 702 KAR 7:081; 702 KAR 7:091  
Terms and months; 702 KAR 7:010

### ECONOMIC DEVELOPMENT

Economic development finance authority; 307 KAR Chapter 1  
Industrial development act tax credit program; 307 KAR Chapter 4

### EDUCATION, ARTS, AND HUMANITIES CABINET

District Support Services  
School administration, finance; 702 KAR Chapter 3  
School terms, attendance, operation; 702 KAR Chapter 7  
Education professional standards board; 704 KAR Chapter 20  
Learning Programs Development  
Office of instruction; 704 KAR Chapter 3

### EDUCATION PROFESSIONAL STANDARDS BOARD

Dating of certification; 704 KAR 20:056

### ELECTRICAL INSPECTORS

Contractor certification; 815 KAR 35:030  
Inspector certification; 815 KAR 35:015

### EMERGENCY MEDICAL SERVICES

(See Health Services)

### EMPLOYEES, STATE

(See Personnel)

### EMPLOYMENT SERVICES

Employment Services (CHR)  
Repealer; 903 KAR 5:001E  
Employment Services  
Classifying person as unemployed, appeals; 787 KAR 2:030  
Confidentiality of records; 787 KAR 2:020  
Veterans' benefits; 787 KAR 2:010  
Training and Reemployment  
Job Training Partnership Act; 788 KAR 2:010  
Unemployment Insurance  
Appeals; 787 KAR 1:110  
Application for employer account, reports; 787 KAR 1:010  
Cash value of board and lodging; 787 KAR 1:170  
Change of status, discontinuance of business; 787 KAR 1:020  
Claimant profiling; 787 KAR 1:310  
Claimant's reporting requirements; 787 KAR 1:090  
Contract construction rates; 787 KAR 1:290  
Covered employment; 787 KAR 1:270  
Determination defined; 787 KAR 1:130  
Due dates; 787 KAR 1:230  
Employer contribution rates; 787 KAR 1:210  
Employer contributions; 787 KAR 1:030  
Employer's records; 787 KAR 1:180  
Fees for representing claimant; 787 KAR 1:120  
Fraud disqualifications; 787 KAR 1:240  
Interstate claimants; 787 KAR 1:150  
Labor dispute or strike, notification; 787 KAR 1:080  
Limitation on pension deductions; 787 KAR 1:280  
Maximum weekly benefit rate; 787 KAR 1:200  
Posting notice to employees; 787 KAR 1:040  
Release of notice of levy; 787 KAR 1:250  
Reasonable time for protesting claim; 787 KAR 1:070  
Recoupment and recovery; 787 KAR 1:190  
Required reports and due dates; 787 KAR 1:220  
Separation for cause, reports; 787 KAR 1:060  
Social Security number required of employees; 787 KAR 1:050

Successorship; 787 KAR 1:300  
Time extension for reports and notices; 787 KAR 1:160  
Unemployment insurance fund payments; 787 KAR 1:140  
Voluntary election of coverage; 787 KAR 1:260  
Week of unemployment defined; 787 KAR 1:100

### ENVIRONMENTAL PROTECTION

Air quality; 401 KAR Chapter 50  
Site characterization, risk assessment, remedial options; 401 KAR 100:050  
Waste management; 401 KAR Chapter 42

### ECONOMIC DEVELOPMENT FINANCE AUTHORITY

Rural tax credit program; 307 KAR 1:030

### ELECTION FINANCE, REGISTRY OF

(See Registry of Election Finance)

### ELECTIONS

(See Registry of Election Finance)

### EMPLOYEES, STATE

Retirement; 105 KAR Chapter 1  
Travel reimbursement; 200 KAR 2:006

### EXECUTIVE BRANCH ETHICS COMMISSION

Repealer; 9 KAR 1:021E

### FAMILY THERAPISTS

(See Marriage, Family Therapists Board)

### FINANCE, ADMINISTRATION CABINET

Kentucky infrastructure authority; 200 KAR Chapter 17  
Personnel pilot programs; 200 KAR Chapter 22  
Private activity bond allocation committee; 200 KAR Chapter 15  
Travel reimbursement, state employees; 200 KAR 2:006

### FISH AND WILDLIFE RESOURCES

Fish  
Boats, outboard motors, restrictions; 301 KAR 1:015  
Fishing limits; 301 KAR 1:201  
Mussel shell harvesting; 301 KAR 1:085  
Game  
Dove, wood duck, teal, migratory game bird hunting; 301 KAR 2:225E  
Licensing  
Definitions; 301 KAR 5:001E  
License agent selection criteria; 301 KAR 5:010E  
Water Patrol  
Personal watercraft requirements; 301 KAR 6:050  
GED  
(See Adult Education and Literacy)

### HAIRDRESSERS AND COSMETOLOGISTS

School's course of instruction; 201 KAR 12:082

### HEALTH POLICY BOARD

Accountable health plan; 909 KAR 1:080  
Certificate of need expenditure minimum; 909 KAR 1:055  
Provider network certification; 909 KAR 1:100E  
Risk assessment, risk adjustment system; 909 KAR 1:090  
State health plan; 909 KAR 1:021

### HEALTH SERVICES

EMS, Ambulance Services  
Air ambulance providers; 902 KAR 14:090  
Basic, advanced life support ground ambulance providers; 902 KAR 14:080  
License procedures, fee schedule for ambulance providers, tiered



## ADMINISTRATIVE REGISTER - D15

response EMS; 902 KAR 14:070  
Health Services, Facilities  
Mobile health services; 902 KAR 20:270

### HEATING, VENTILATION, AIR CONDITIONING

Contractor application reviews; 815 KAR 8:040  
Journeyman HVAC mechanic licensing; 815 KAR 8:020  
Master HVAC contractor licensing requirements; 815 KAR 8:010

### HIGHER EDUCATION ASSISTANCE AUTHORITY

Authority  
Institution participation requirements; 11 KAR 4:040  
Teacher Scholarship Loan Program  
Teacher scholarships; 11 KAR 8:030E

### HIGHER EDUCATION STUDENT LOAN CORPORATION

Eligibility for insured student loans made by corporation; 15 KAR 1:040

### HIGHWAYS

Traffic  
Bus dimension limits; 603 KAR 5:071  
Coal-haul highways; 603 KAR 5:115  
Mandatory annual bus inspection; 603 KAR 5:072  
Motor vehicle dimension limits; 603 KAR 5:070  
Moving overdimensional manufactured homes, boats; 603 KAR 5:110  
Permit, overweight, overdimensional; 603 KAR 5:075  
Weight (mass) classification, state highways; 603 KAR 5:301

### HOUSING, BUILDINGS AND CONSTRUCTION

Building code; 815 KAR Chapter 7  
Electrical inspectors; 815 KAR Chapter 35  
Heating, ventilation, air conditioning (HVAC); 815 KAR Chapter 8  
Plumbing; 815 KAR Chapter 20  
Standards of safety; 815 KAR Chapter 10

### HUMAN RESOURCES

Employment Services  
Repealer; 903 KAR 5:001E  
Health Services  
EMS, ambulance service; 902 KAR Chapter 14  
Health services, facilities; 902 KAR Chapter 20  
Medicaid; 907 KAR Chapter 1  
Mental Health, Mental Retardation  
Substance abuse; 908 KAR Chapter 1  
Social Insurance  
Food stamp program; 904 KAR Chapter 3  
Public assistance; 904 KAR Chapter 2  
Social Services  
Children's residential services; 905 KAR Chapter 7

### INDUSTRIAL DEVELOPMENT ACT TAX CREDIT PROGRAM

Program; 307 KAR 4:010

### INFRASTRUCTURE AUTHORITY

Federally assisted wastewater revolving fund, guidelines; 200 KAR 17:050

### INSURANCE

Insurance Fraud  
Designation of contact person; 806 KAR 47:010  
Reporting fraudulent insurance acts; 806 KAR 47:020  
Special investigative unit requirements; 806 KAR 47:030

### JUSTICE CABINET

Charitable gaming; 500 KAR Chapter 11  
Corrections  
Class D felons; 501 KAR Chapter 2

Office of the Secretary; 501 KAR Chapter 6  
State Police  
Candidate selection; 502 KAR Chapter 45

### LABOR

Occupational safety and health; 803 KAR Chapter 2  
Workers' claims; 803 KAR Chapter 25  
Workers' compensation funding commission; 803 KAR Chapter 30

### LEARNING PROGRAMS DEVELOPMENT

Office of Instruction  
Ranking of certified school personnel; 704 KAR 3:470

### LIVESTOCK SANITATION

"Farm fresh" cattle identified; 302 KAR 20:076  
Vesicular stomatitis; 302 KAR 20:115E

### MARRIAGE, FAMILY THERAPISTS BOARD

Definitions; 201 KAR 32:010  
Equivalent course of study; 201 KAR 32:020  
Fees; 201 KAR 32:030

### MEDICAID SERVICES

Estate recovery; 907 KAR 1:585  
Medical transportation; 907 KAR 1:060E; 907 KAR 1:061E  
Physicians' services; 907 KAR 1:009E; 907 KAR 1:010E

### MENTAL HEALTH, MENTAL RETARDATION

Substance Abuse  
Confidential treatment records; 908 KAR 1:320

### MILITARY AFFAIRS

Disaster, Emergency Services  
Civil penalty assessment, hearings; 106 KAR 1:131  
Fee account grant requirements for local emergency planning committees; 106 KAR 1:091

### MOTOR VEHICLES, STATE-OWNED

(See Transportation)

### NATURAL RESOURCES, ENVIRONMENTAL PROTECTION CABINET

Environmental protection; 401 KAR Chapters 42 through 100

### NURSING

Advanced registered nurse practitioners, scope, standards of practice; 201 KAR 20:057  
Application and service fees; 201 KAR 20:240  
Disciplinary hearing procedures; 201 KAR 20:162  
Expungement of records; 201 KAR 20:410

### OCCUPATIONAL SAFETY AND HEALTH

Adoption of 29 CFR Part 1910; 803 KAR 2:320E  
Adoption of 29 CFR Part 1915, 1917, 1918, 1919; 803 KAR 2:500E  
Adoption of 29 CFR Part 1926; 803 KAR 2:403E to 803 KAR 2:425E

### OCCUPATIONS AND PROFESSIONS

Dentistry; 201 KAR Chapter 8  
Hairdressers, cosmetologists; 201 KAR 12:082  
Marriage, family therapists; 201 KAR Chapter 32  
Nursing; 201 KAR Chapter 20  
Physical therapists; 201 KAR Chapter 22

### PERSONNEL

Classified Employees  
Leave; 101 KAR 2:100E  
Unclassified Employees  
Leave; 101 KAR 3:010E



## ADMINISTRATIVE REGISTER - D16

### PERSONNEL PILOT PROGRAMS

NREPC employment manuals; 200 KAR 22:040; 200 KAR 22:050;  
200 KAR 22:070

Personnel Department employment manual; 200 KAR 22:060

Veterans Center employment manual; 200 KAR 22:080

Vocational Rehabilitation Department employment manual; 200 KAR  
22:030

### PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

Contractor certification; 415 KAR 1:114E

### PHYSICAL THERAPY BOARD

Foreign-trained therapists requirements; 201 KAR 22:070

### PLUMBING

Parts, materials list; 815 KAR 20:020

SDR 11, CPVC plastic pipe, fittings, storage, installation; 815 KAR  
20:078

Traps and clean-outs; 815 KAR 20:100

Water supply, distribution; 815 KAR 20:120

### PRIVATE ACTIVITY BOND ALLOCATION COMMITTEE

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

### PUBLIC PROTECTION AND REGULATION CABINET

Alcohol Beverage Control

Licensing; 804 KAR Chapter 4

Housing, Buildings and Construction

Building code; 815 KAR Chapter 7

Electrical inspectors; 815 KAR Chapter 35

Heating, ventilation, air conditioning; 815 KAR Chapter 8

Plumbing; 815 KAR Chapter 20

Standards of safety; 815 KAR Chapter 10

Insurance

Insurance fraud; 806 KAR Chapter 47

Public Service Commission; 807 KAR Chapter 5

### PUBLIC SERVICE COMMISSION

Management and operation audits; 807 KAR 5:013

### REGISTRY OF ELECTION FINANCE

Practice and Procedure

Three (3) judge panel procedures; 32 KAR 2:210

Reports and Forms

Joint in-kind donations, reporting; 32 KAR 1:160E

### RETIREMENT

Kentucky Employees Retirement System

Administrative hearing; 105 KAR 1:215

Disability procedures; 105 KAR 1:210

### REVENUE

(See also Taxation)

Income Tax

Corporations; 103 KAR 16:190

### SAFETY STANDARDS (HOUSING, BUILDINGS, & CONSTRUCTION)

Fire prevention code; 815 KAR 10:050

### SCHOOL FACILITIES CONSTRUCTION COMMISSION

Commission procedures; 750 KAR 1:010

### SOCIAL INSURANCE

Food Stamp Program

Administrative disqualification, hearing, penalty; 904 KAR 3:060

Claims, additional administrative provisions; 904 KAR 3:050

Definitions; 904 KAR 3:010

Fair hearings; 904 KAR 3:070

Financial requirements; 904 KAR 3:020

Restaurant certification to accept food stamps; 904 KAR 3:100

Public Assistance

AFDC, technical requirements; 904 KAR 2:006

Adverse action, conditions; 904 KAR 2:046

Definitions; 904 KAR 2:001

Oaths, affirmations; delegation of power; 904 KAR 2:060

Summer cooling program; 904 KAR 2:460E

Time and manner of payments; 904 KAR 2:050

### SOCIAL SERVICES

Children's Residential Services

Kentucky educational collaborative for state agency children; 705  
KAR 7:250

### SOIL AND WATER CONSERVATION COMMISSION

Administration of soil erosion & water quality cost-share fund; 416  
KAR 1:010

### STATE POLICE

Candidate Selection

Application; 502 KAR 45:035E

Background investigation; 502 KAR 45:065E

Content based task test; 502 KAR 45:150E

Definitions; 502 KAR 45:005E

Disqualifications; 502 KAR 45:025E

Examination, medical; 502 KAR 45:085E

Examination, written; 502 KAR 45:045E

Merit pay program; 502 KAR 45:145E

Oral interview; 502 KAR 45:055E

Qualifications; 502 KAR 45:015E

Register; 502 KAR 45:075E

### TAXATION

Income Tax; Corporations

Unitary method of reporting; 103 KAR 16:190

### TOURISM CABINET

Fish and Wildlife Resources

Fish; 301 KAR Chapter 1

Game; 301 KAR Chapter 2

Licensing; 301 KAR Chapter 5

Water patrol; 301 KAR Chapter 6

Travel Development

Marketing, advertising services; 300 KAR Chapter 1

### TRANSPORTATION

Administration

State-owned motor vehicles; 600 KAR 1:120

Highways

Traffic; 603 KAR Chapter 5

Vehicle Regulation

Driver's license; 601 KAR Chapter 12

Motor vehicle tax; 601 KAR Chapter 9

### TRAVEL DEVELOPMENT

Marketing and Advertising Services

Regional marketing, matching funds program; 300 KAR 1:010

### VEHICLE REGULATION

Drivers' License

Driving privilege withdrawal for child support nonpayment; 601  
KAR 12:070

Motor Vehicle Tax

Dealer plates; 601 KAR 9:220

Use license, records, taxes; 601 KAR 9:074



## **ADMINISTRATIVE REGISTER - D17**

### **VOCATIONAL REHABILITATION**

#### **Administration**

Rehabilitation technology services; 781 KAR 1:040

### **WASTE MANAGEMENT**

#### **Underground Storage Tanks**

Classification of petroleum UST systems, listing of associated cleanup levels; 401 KAR 42:080

Definitions; 401 KAR 42:005

Financial responsibility; 401 KAR 42:090

Out-of-service, temporary and permanent closure, change in service of UST systems; 401 KAR 42:070

Owner registration fees; 401 KAR 42:200

Performance standards for new systems; 401 KAR 42:020

Release detection; 401 KAR 42:040

Release response, corrective action, UST systems containing petroleum or hazardous substances; 401 KAR 42:060

Scope of program; 401 KAR 42:011

Voluntary closure; 401 KAR 42:071

### **WILDLIFE**

(See Fish and Wildlife Resources)

### **WORKERS' CLAIMS**

Alternative dispute resolution systems; 803 KAR 25:150

Filing claims information with department; 803 KAR 25:170

### **WORKERS' COMPENSATION FUNDING COMMISSION**

Special fund assessments; 803 KAR 30:010

### **WORKFORCE DEVELOPMENT CABINET**

#### **Adult and Technical Education**

Adult education; 780 KAR Chapter 9

Facilities, equipment of KY TECH System; 780 KAR Chapter 7

Instructional programs; 780 KAR Chapter 4

Management of KY TECH System; 780 KAR Chapter 2

Veterans' approval agency; 780 KAR Chapter 5

Vocational, teachers education; 780 KAR Chapter 8

Adult education and literacy; 785 KAR Chapter 1

#### **Employment Services**

Employment services; 787 KAR Chapter 2

Training and reemployment; 788 KAR Chapter 2

Unemployment insurance; 787 KAR Chapter 1

#### **Vocational Rehabilitation**

Administration; 781 KAR Chapter 1

