

ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on November 6, 1995. See tentative agenda beginning on page 848 of this Administrative Register.

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

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(See instructions on reverse)

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 6, 1995, 10 a.m.
Room 149, Capitol Annex**

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

Registry of Election Finance

Reports and Forms

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

Practice and Procedure

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

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)

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems**

General Rules

105 KAR 1:210. Disability procedures.

105 KAR 1:215. Administrative hearing.

FINANCE AND ADMINISTRATION CABINET

Travel Expense and Reimbursement

200 KAR 2:006. Employees' reimbursement for travel.

Personnel Pilot Program

200 KAR 22:080. Comprehensive Employment Manual of the Kentucky Veteran Center for use in the Pilot Personnel Program.

GENERAL GOVERNMENT CABINET

Board of Hairdressers and Cosmetologists

201 KAR 12:082. School's course of instruction. (Deferred from October)

Board of Physical Therapy

201 KAR 22:070. Requirements for foreign trained physical therapists. (Deferred from October)

TOURISM CABINET

Department of Travel Development

Travel Development

300 KAR 1:010. Procedure for regional marketing and matching funds program. (Deferred from October)

Department of Fish and Wildlife Resources

Game

301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting. (Repeals 301 KAR 2:044)

Licensing

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

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

Water Patrol

301 KAR 6:050. Requirements for personal watercraft.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Underground Storage Tanks

401 KAR 42:005. Definitions related to 401 KAR Chapter 42. (Amended After Hearing)

401 KAR 42:011. Scope of Underground Storage Tank Program. (Not Amended After Hearing)

401 KAR 42:020. Performance standards for new UST systems. (Amended After Hearing)

401 KAR 42:040. Release detection. (Amended After Hearing)

401 KAR 42:060 & E. Release response and corrective action for UST systems containing petroleum or hazardous substances. (Amended After Hearing)

401 KAR 42:070 & E. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change in service of UST systems. (Amended After Hearing)

401 KAR 42:071. Voluntary closure for facilities that permanently closed a UST system or had a confirmed release prior to April 18, 1994. (Amended After Hearing)

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401 KAR 42:080 & E. Classification of petroleum underground storage tank systems and listing of associated cleanup levels. (Amended After Hearing)

401 KAR 42:090. Financial responsibility. (Not Amended After Hearing)

401 KAR 42:200. Underground storage tank system owner registration fees. (Not Amended After Hearing)

Air Quality - General Administrative Procedures

401 KAR 50:031. Inherent physical limitations.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:114E. Contractor certification.

JUSTICE CABINET Department of Corrections

Class D Felons

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 6:050. Luther Luckett Correctional Complex.

Department of State Police

Candidate Selection

502 KAR 45:005E. Definitions.

502 KAR 45:015E. Qualifications.

502 KAR 45:025E. Disqualification.

502 KAR 45:035E. Application.

502 KAR 45:045E. Written examination.

502 KAR 45:055E. Oral interview.

502 KAR 45:065E. Background investigation.

502 KAR 45:075E. Register.

502 KAR 45:085E. Medical examination.

502 KAR 45:145E. Merit Pay Program. (Deferred from October)

502 KAR 45:150E. Content Based Task Test (CBTT).

TRANSPORTATION CABINET

Administration

600 KAR 1:120. Purchase, use, lease, maintenance and disposal of state-owned motor vehicles.

Department of Vehicle Regulation

Motor Vehicle Tax

601 KAR 9:220. Motor vehicle dealer plates.

Department of Highways

Traffic

603 KAR 5:075. Safety requirements and permits for the transportation of overweight or overdimensional motor vehicles.

603 KAR 5:115. Coal-haul highway system; reporting requirements.

603 KAR 5:301. Weight classification of the state-maintained system of highways.

EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education

Office of District Support

School Administration and Finance

702 KAR 3:280. School district Medicaid providers. (Amended After Hearing)

WORKFORCE DEVELOPMENT CABINET

Department for Adult and Technical Education

Adult Education

780 KAR 9:131. Repeal of State Board for Adult and Technical Education administrative regulations: 780 KAR 9:010, 9:030, 9:040, 9:050, 9:060, 9:070, 9:080, 9:090, 9:100, 9:110, 9:120 and 9:130.

Department for Adult Education and Literacy

Adult Education and Literacy

785 KAR 1:100. Provision of instruction for individuals sentenced by a court to participate in educational programs. (Deferred from October)

785 KAR 1:110. Qualifications for progressing satisfactorily through a GED program. (Deferred from October)

Department for Employment Services

Office of Training and Reemployment

788 KAR 2:010 & E. Job Training Partnership Act. (Deferred from October)

LABOR CABINET

Occupational Safety and Health

803 KAR 2:320E. Adoption of 29 CFR Part 1910.1000-.1500. (Deferred from September)

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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 25:170. Filing of claims information with the Department of Workers' Claims. (Amended After Hearing)

Workers' Compensation Funding Commission

803 KAR 30:010. Special fund assessments.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Housing, Buildings and Construction

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation, and air conditioning (HAVAC) contractor licensing requirements.

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HAVAC) mechanic licensing requirements.

Plumbing

815 KAR 20:020. Parts of materials list.

815 KAR 20:078. Storage and installation of SDR 11, CPVC plastic pipe and fittings.

815 KAR 20:120. Water supply and distribution.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Health Services and Facilities

902 KAR 20:270. Mobile health services. (Amended After Hearing)

Department for Employment Services

Unemployment Insurance

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.

Department for Social Insurance

Public Assistance

904 KAR 2:001. Definitions.

Food Stamp Program

904 KAR 3:010. Definitions.

Department for Social Services

Children's Residential Services

905 KAR 7:250 & E. Kentucky educational collaborative for state agency children. (Public Hearing in August)

Department for Medicaid Services

Medicaid Services

907 KAR 1:060E. Medical transportation. (Repeals 907 KAR 1:420) (Deferred from October)

907 KAR 1:061E. Payments for transportation services. (Deferred from October)

Department for Mental Health and Mental Retardation

Substance Abuse

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

KENTUCKY HEALTH POLICY BOARD

Administration

909 KAR 1:021 & E. State Health Plan. (Amended After Hearing)

909 KAR 1:055 & E. Certificate of need. (Repeals 902 KAR 20:136) (Deferred from October)

909 KAR 1:100E. Provider network certification. (Deferred from October)

**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: KRS 13A.040(9) provides that the Regulations Compiler shall correct errors that do not change the substance of an administrative regulation, such as typographical, format, and grammatical errors.

Pursuant to KRS 13A.040(9), the Regulations Compiler has made the following corrections to this administrative regulation: (1) In Sections 1(1) and 2(4) paragraphs have been renumbered sequentially; (2) In Section 2(1)(b), the word "conduct" should be "contact", and has been changed to "contact"; and (3) the sections were misnumbered and include two Sections 4: Section "3" replaces a redundant Section "4".

**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
- (d) ~~(e)~~ 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 ~~contact~~ ~~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:

(b) ~~(a)~~ Shall consist of the material contained in the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission"; and

(c) ~~(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 3. ~~[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 4. 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.

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 bulletin" 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)(a) 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.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

GENERAL GOVERNMENT CABINET
State Board of Elections

Date: October 6, 1995
General Government Cabinet
State Board of Elections

- (1) **31 KAR 5:020**, Placement of voting machines.
- (2) The State Board of Elections 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 November 30, 1995, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 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: State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the State Board of Elections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the placement of voting machines is KRS 117.015(1) and 117.035(1).
 - (b) The administrative regulation that the State Board intends to promulgate will amend 31 KAR 5:020 as follows: Section 4 will be amended to delete the prohibition on placing a partition between the voting machine and the area occupied by the clerk.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This amendment will allow those counties using Micro Vote voting machines to place partitions up to prevent the precinct workers and other voters from seeing whether the voter casts a write-in vote. The administrative regulation will still prohibit the placement of voting machines in a separate room from the precinct workers.
 - (d) The benefits expected from administrative regulation are: This administrative regulation will protect the secrecy of the ballot in those using a Micro Vote voting system because if the clerk is permitted to put up a barrier, the precinct workers and other voters will not be able to determine whether the voter has cast a vote for a write-in candidate.
 - (e) The administrative regulation will be implemented as follows: This proposed administrative regulation will permit counties to put up a partition to allow the voters more secrecy in voting. This will give discretion to the county board to put up barriers, where necessary, to protect the voter's right to a secret ballot.

DEPARTMENT OF STATE
Registry of Election Finance

Date: October 9, 1995
Department of State
Registry of Election Finance

- (1) **32 KAR 1:170**, Political party activities.
- (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 November 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 November 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.
- (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:

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- (a) The statutory authority for the promulgation of an administrative regulation relating to political party activities is KRS 121A.060(2)(d).
- (b) The administrative regulation that the Registry of Election Finance intends to promulgate will replace 32 KAR 1:170E.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 121A.050(1) and (2) imposes a \$500 limit on contributions made by political party executive committees to slates of candidates for governor and lieutenant governor, while parties may make unlimited contributions to candidates for other statewide offices. Because the party executive committees traditionally engage in activities in support of all party nominees, including nominees for governor and lieutenant governor, it is necessary to promulgate this administrative regulation to regulate party activities to ensure that the contribution limit applicable to slates of candidates for governor and lieutenant governor is strictly enforced.
- (d) The benefits expected from administrative regulation are: This administrative regulation will provide guidelines for the political parties to follow in conducting campaign activities for the benefit of gubernatorial slates and other candidates.
- (e) The administrative regulation will be implemented as follows: The general counsel for the Registry of Election Finance will coordinate the implementation of this regulation.

AUDITOR OF PUBLIC ACCOUNTS

Date: October 6, 1995

Auditor of Public Accounts

- (1) **45 KAR 1:030.** Audits of sheriff's tax settlements.
- (2) Auditor of Public Accounts 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 November 27, 1995, at 1 p.m., at Auditor of Public Accounts, 2439 US 127 South, 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 November 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: Auditor of Public Accounts, 2439 US 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Auditor of Public Accounts 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 45 KAR 1:030, Audits of sheriff's tax settlements is state statutes.
- (b) The administrative regulation that the Auditor of Public Accounts intends to promulgate will amend 45 KAR 1:030, Audits of sheriff's tax settlements. It will set forth uniform auditing standards, procedures, and formats for performing and reporting audits of sheriff's tax settlements.
- (c) The necessity and function of the proposed administrative regulation is as follows: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of elected county officials.
- (d) The benefits expected from administrative regulation are: This administrative regulation establishes uniform auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to audits of sheriff's tax settlements.
- (e) The administrative regulation will be implemented as follows: The Auditor of Public Accounts will review audit reports and working papers performed by its staff. The Auditor of Public Accounts will review audit reports and working papers of audits of sheriff's tax settlements performed by independent certified public accountants.

Date: October 6, 1995

Auditor of Public Accounts

- (1) **45 KAR 1:040.** Audits of county fee officials.
- (2) Auditor of Public Accounts 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 November 27, 1995, at 2 p.m., at Auditor of Public Accounts, 2439 US 127 South, 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 November 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: Auditor of Public Accounts, 2439 US 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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- (b) Persons who wish to file this request may obtain a request form from the Auditor of Public Accounts 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 45 KAR 1:040, Audits of county fee officials is state statutes.

(b) The administrative regulation that the Auditor of Public Accounts intends to promulgate will amend 45 KAR 1:040, Audits of county fee officials. It will set forth uniform auditing standards, procedures, and formats for performing and reporting audits of elected county fee officials.

(c) The necessity and function of the proposed administrative regulation is as follows: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of elected county fee officials.

(d) The benefits expected from administrative regulation are: This administrative regulation establishes uniform auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to audits of county fee officials.

(e) The administrative regulation will be implemented as follows: The Auditor of Public Accounts will review county fee official audit working papers and reports performed by its staff. The Auditor of Public Accounts will review reports and working papers of county fee official audits performed by independent certified public accountants.

Date: October 6, 1995

Auditor of Public Accounts

(1) **45 KAR 1:050.** Audits of fiscal courts.

(2) Auditor of Public Accounts 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 November 27, 1995, at 3 p.m., at Auditor of Public Accounts, 2439 US 127 South, 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 November 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: Auditor of Public Accounts, 2439 US 127 South, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Auditor of Public Accounts 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 45 KAR 1:050, Audits of fiscal courts is state statutes.

(b) The administrative regulation that the Auditor of Public Accounts intends to promulgate will amend 45 KAR 1:050, Audits of fiscal courts. It will set forth uniform auditing standards, procedures, and formats for performing and reporting audits of fiscal courts.

(c) The necessity and function of the proposed administrative regulation is as follows: The Auditor of Public Accounts is required to develop uniform auditing standards, procedures, and formats for performing and reporting audits of fiscal courts.

(d) The benefits expected from administrative regulation are: This administrative regulation establishes uniform auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to audits of fiscal courts.

(e) The administrative regulation will be implemented as follows: The Auditor of Public Accounts will review reports and working papers of fiscal court audits performed by its staff. The Auditor of Public Accounts will review audit reports and working papers of fiscal court audits performed by independent certified public accountants.

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

Date: October 5, 1995

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 5:314.** Disclosure of contractor's financial records and information to certain governmental entities.

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

(3) A public hearing to receive oral and written comments on the proposed administration regulation has been scheduled for November 28, 1995, at 1 p.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nancy Haggerty, Administrative Branch Manager, Division of Purchases, Finance and Administration Cabinet, Room 367, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 45A.035(2)(g).

(b) The proposed regulation will provide for disclosure of a contractor's financial and other related documents to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts or the Legislative Research Commission regardless of the proprietary nature of the information.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is required due to the recent Kentucky Supreme Court decision styled Marina Management Services, Inc., et al. v. Commonwealth and Legislative Program Review and Investigation Committee, 42 K.L.S. 5 (May 19, 1995). In this opinion, the Court held that the financial information of a state contractor would not be disclosed to the Legislative Program Review and Investigative Committee under the Open Records Act. This ruling may affect the ability of certain oversight governmental agencies from obtaining access to financial data of state contractors. This proposed regulation would provide for the disclosure of this information to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts or the Legislative Research Commission regardless of its status under the Open Records Law.

(d) The benefit expected from this proposed administrative regulation is as follows: The access to contractor financial records of certain oversight agencies will improve the efficiency, economy and delivery of private services to the government and insure accountability to the people of Kentucky.

(e) This administrative regulation will be implemented by the Finance and Administration Cabinet by requiring this disclosure language in all state contracts with private entities.

FINANCE AND ADMINISTRATION CABINET Office of Financial Management and Economic Analysis

Date: October 13, 1995

Finance and Administration Cabinet

Office of Financial Management and Economic Analysis

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

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

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

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 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: Kim Blitch, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex 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 Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed administrative regulation:

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

(b) The proposed amendment to 200 KAR 15:010 is a technical correction that will require that the Notice of Issuance be filed by the close of business on the 90th day after the confirmation of allocation of private activity bond cap.

(c) The necessity and function of the proposed administrative regulation is as follows: Technical correction to provide consistency within Section 7.

(d) The benefits expected from administrative regulation are: To provide consistency within Section 7.

(e) The administrative regulation will be implemented as follows: All state bond counsel firms and state agencies which have expressed an interest in Kentucky private activity bond volume cap will be provided with the revised date in which they must apply a notice of issuance to the Kentucky Private Activity Bond Allocation Committee.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary

Date: October 13, 1995

Finance and Administration Cabinet

Office of the Secretary

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- (1) **200 KAR 22:090.** Comprehensive employment manual of the Workforce Development Cabinet's Department for the Blind, for use in the Pilot Personnel Program.
- (2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 28, 1995, at 9 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 28, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Gail Prewitt, Assistant Director, Governmental Services Center, Academic Services Building, Kentucky State University, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file the request may obtain a request form from the Office of the Secretary at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.430(1)(a), (b), and (c).
- (b) The proposed regulation will promulgate the comprehensive employment manual of the Workforce Development Cabinet's Department for the Blind, for Use in the Pilot Personnel Program as required by KRS 18A.430(1).
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation will promulgate the comprehensive employment manual of the Workforce Development Cabinet's Department for the Blind, for use in the Pilot Personnel Program.
- (d) The benefit expected from this proposed administrative regulation is as follows: The comprehensive employment manual will specify the terms and conditions of employment for employees of the Workforce Development Cabinet's Department for the Blind, who are participating in the Pilot Personnel Program, as required by KRS 18A.430(1).
- (e) This administrative regulation will be implemented by the Personnel Steering Committee by notifying the Workforce Development Cabinet's Department for the Blind when the regulation is made effective, with a recommendation that the comprehensive employment manual be made available to all employees participating in the Pilot Personnel Program.

KENTUCKY LOTTERY CORPORATION

Date: October 12, 1995

Kentucky Lottery Corporation

- (1) **202 KAR 3:020.** Procurement guidelines.
- (2) The Kentucky Lottery Corporation intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, November 30, 1995, at 10 a.m. at the corporate offices of the Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271.
- (4)(a) The public hearing will be held if:
1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing and agreement to attend the hearing are not received from the required number of people at least 20 days prior to November 30, 1995, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271, Attention: Michael J. Denney, Contract Administration and Compliance Coordinator.
- (b) On a request for a public hearing, a person shall state the following:
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 a request may obtain a request form from the Kentucky Lottery Corporation at the address listed above.
- (7) Information relating to the proposed administrative regulation is as follows:
- (a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 154A.050(1)(d) and 154A.120(1).
- (b) The proposed administrative regulation will establish procurement procedures of the Kentucky Lottery Corporation.
- (c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 154A.120(1), the Kentucky Lottery Corporation is authorized to adopt administrative regulations establishing its procurement procedures. Furthermore, the statute provides that the administrative regulations shall be designed to provide for the purchase of supplies, equipment, services and construction items in such a

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manner as to provide the greatest long-term benefit to the Commonwealth, the greatest integrity for the corporation, and the best services and products for the public. The proposed regulation will establish the procurement procedures of the Kentucky Lottery Corporation in a manner consistent with KRS 154A.120(1) and will govern the procurement activities of the corporation in lieu of KRS Chapter 45A.

(d) The benefit expected from this proposed administrative regulation is as follows: Under KRS 154A.120(1), the Kentucky Lottery Corporation is required to conduct all procurements in accordance with KRS Chapters 45A and 154A or by administrative regulations adopted by the corporation. As an independent, de jure municipal corporation and political subdivision of the Commonwealth which is operated in an entrepreneurial and business-like manner, the Kentucky Lottery Corporation has unique characteristics which require procurement procedures which are separate and distinct from the procurement procedures contained in the Kentucky Model Procurement Code. The proposed regulation will allow the corporation to operate under its own procurement procedures, while retaining the benefits of Kentucky Model Procurement Code, to the extent feasible.

(e) The proposed administrative regulation will be implemented by the Board of Directors of the Kentucky Lottery Corporation, its officers and its Department of Purchasing.

Date: October 12, 1995

Kentucky Lottery Corporation

(1) **202 KAR 3:040**. Internal audit procedures.

(2) The Kentucky Lottery Corporation intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, November 30, 1995, at 10 a.m. at the corporate offices of the Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written requests to the Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271, Attention: Michael J. Denney, Contract Administration and Compliance Coordinator.

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

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 a request may obtain a request form from the Kentucky Lottery Corporation at the address listed above.

(7) Information relating to the proposed administrative regulation is as follows:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 154A.050(1)(d) and KRS 154A.160(2)(c).

(b) The proposed administrative regulation will establish a system of continuous internal audits for the Kentucky Lottery Corporation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 154A.020(1) provides that the Kentucky Lottery Corporation shall be accountable to the Governor, the General Assembly and the people of the Commonwealth through a system of audits, reports and thorough finance disclosure. As a part of that accountability, the corporation is required, pursuant to KRS 154A.060(2)(c), to adopt by administrative regulation a system of continuous internal audits. The proposed regulation will establish a system of continuous internal audits for the Kentucky Lottery Corporation.

(d) The benefits expected from the proposed administrative regulation are as follows: By adopting by administrative regulation a system of continuous internal audits, the Kentucky Lottery Corporation will be in compliance with KRS 154A.060(2)(c). In addition, adopting the audit system will promote accountability of the corporation to the Governor, the General Assembly, and the people of the Commonwealth, as specified in KRS 154A.020(1).

DEPARTMENT OF AGRICULTURE

Date: September 21, 1995

Department of Agriculture

(1) The regulation to be amended is **302 KAR 31:025**, Commercial structural pest control and fumigation.

(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 November 29, 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 November 29, 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."

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

(b) Persons who wish to file this request may obtain a request form from the 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 31:025 is KRS 257.050.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend 302 KAR 31:025. This regulation sets forth the requirement for the use and application of pesticide. This regulation sets forth regulation applicable to commercial structural pest control and fumigation.

(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 regulation furthers Kentucky health and disease control initiatives for livestock.

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

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

Date: October 13, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 51:010**, Attainment status designations, will upon adoption, amend 401 KAR 51:010. The subject matter of this amendment is a revision to redesignate Boyd County and a portion of Greenup County from moderate ozone nonattainment to attainment. The amendment will also add a requirement that a road or intersection of two or more roads that defines a nonattainment boundary for an area which is a portion of a county designated as nonattainment for ozone for any classification except marginal include as nonattainment an area extending 750 feet from the center of the road or intersection.

(2) The Division for Air Quality intends to promulgate an amendment to 401 KAR 51:010 governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for November 30, 1995 at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

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

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

(a) The statutory authority for the promulgation of an administrative regulation relating to the designation of ozone nonattainment areas is KRS 224.10-100 and 42 USC 7401-7626.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 51:010, Attainment status designations. It will make the attainment status designations for ozone agree with the U.S. EPA designations.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. 42 USC 7401-7626 likewise requires the state to implement standards for national primary and secondary ambient air quality. The Division for Air Quality proposes this amendment to update the status for ozone nonattainment for areas within the state and to assure compatibility with the U.S. EPA designations.

(d) The benefit expected from the amended regulation is that the state regulations will be applied to the areas based on the most recent ozone classification.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected sources shall comply with the designations in 401 KAR 51:010, as part of the existing regulatory program.

Date: October 13, 1995

Natural Resources and Environment Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 59:015**, New indirect heat exchangers, will upon adoption amend the existing administrative regulation. The subject matter of this amendment is a revision which will delete the federal New Source Performance Standards (NSPS) provisions that are currently contained in the existing administrative regulation, while retaining the provisions that are an approved part of the Kentucky State Implementation Plan (SIP).

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

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for November 30, 1995, at 10

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a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

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

(a) The statutory authority for the promulgation of an administrative regulation relating to control technology standards approved to the SIP is 42 USC 7410 and KRS 224.10-100.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 59:015, New indirect heat exchangers. It will remove the NSPS provisions and retain in 401 KAR 59:015 the requirements for new indirect heat exchangers that are approved to the Kentucky SIP. The corresponding federal NSPS provisions will be incorporated by reference in a new administrative regulation, 401 KAR 60:040.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. 42 USC 7410(a) requires each state to adopt a state implementation plan which implements standards for national primary and secondary ambient air quality. The Division for Air Quality proposes this amendment to retain the approved state implementation plan provisions for new indirect heat exchangers.

(d) The benefit expected from the amended regulation is that new indirect heat exchangers that are not subject to NSPS regulation will be regulated by a simpler administrative regulation satisfying the Clean Air Act requirement.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the affected sources shall comply with the provisions of 401 KAR 59:015 as part of the existing regulatory program.

Date: October 13, 1995

Natural Resources and Environment Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 60:040**, Standards of performance for fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971. The subject matter of this administrative regulation is the federal New Source Performance Standards (NSPS) for fossil-fuel steam generators.

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NSPS regulation, 40 CFR 60.40 to 60.47 (40 CFR 60, Subpart D), 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 November 30, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference the new source performance standards in the corresponding federal rule that were previously contained in 401 KAR 59:015.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7411(b) mandates the U.S. EPA to promulgate federal NSPS regulations which establish standards of performance for new sources in listed source categories. 42 USC 7411(c)(1) enables the U.S. EPA to delegate to states the authority for implementing and enforcing federal NSPS regulations. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will retain the delegated authority to enforce the provisions of the federal NSPS regulation.

(d) The benefit expected from this administrative regulation is that sources subject to the federal NSPS regulation will continue to work with

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the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation the sources subject to 40 CFR 60.40 to 60.47 (40 CFR 60, Subpart D) shall comply with the provisions of 401 KAR 60:040 as part of the existing regulatory program.

Date: October 13, 1995

Natural Resources and Environment Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 60:041**, Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978, will upon adoption replace 401 KAR 59:016. The subject matter of this administrative regulation is the federal New Source Performance Standards (NSPS) for electric utility steam generating units.

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NSPS regulation, 40 CFR 60.40a to 60.49a (40 CFR 60, Subpart Da), 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 November 30, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will replace the existing administrative regulation, 401 KAR 59:016, New electric utility steam generating units. The new administrative regulation will incorporate by reference the revised new source performance standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7411(b) mandates the U.S. EPA to promulgate federal NSPS regulations which establish standards of performance for new sources in listed source categories. 42 USC 7411(c)(1) enables the U.S. EPA to delegate to states the authority for implementing and enforcing the federal NSPS regulations. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will retain the delegated authority to enforce the provisions of the federal NSPS regulation.

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

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation sources subject to 40 CFR 60.40a to 60.49a (40 CFR 60, Subpart Da) shall comply with the provisions of 401 KAR 60:041 as part of the existing regulatory program.

JUSTICE CABINET Department of Corrections

Date: October 13, 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, inmate personal property, assessment center operations, inmate conflicts, preparole progress reports, referral procedure for inmates adjudicated guilty but mentally ill, protective custody, inmate furloughs, community center program, duties of probation and parole officers, testimony, court demeanor and availability of legal services, equal access to services, cooperation with law enforcement agencies, Kentucky community resources directory, and conditions of regular supervision request for modification.

(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 November 30, 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 November 30, 1995, the

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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. Inmate personal property (17.1) shall be amended to reflect revisions to clarify the items of clothing and personal affects which are allowed for inmate use.

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

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

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

11. 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.

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

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

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

15. Probation and parole procedures (27-01-01) shall be amended to reflect revisions necessary to reference the proper personnel and policies and procedures which are currently applicable.

16. Duties of probation and parole officers (27-02-01) shall be amended to reflect revisions necessary to reference the proper personnel and policies and procedures which are currently applicable.

17. Testimony, court demeanor and availability of legal services (27-05-01) shall be amended to reflect revisions necessary to reference the proper personnel and policies and procedures which are currently applicable.

18. Equal access to services (27-06-02) shall be amended to reflect revisions necessary to reference the proper personnel and policies and procedures which are currently applicable.

19. Cooperation with law enforcement agencies (27-07-01) shall be amended to reflect revisions necessary to reference the proper personnel and policies and procedures which are currently applicable.

20. Kentucky community resources directory (27-09-01) shall be amended to reflect revisions necessary to reference the proper personnel and policies and procedures which are currently applicable.

21. Conditions of regular supervision request for modification (27-12-04) shall be amended to reflect revisions necessary to reference the proper personnel and policies and procedures which are currently applicable.

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

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

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

Date: October 12, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary: Staff participation in professional organizations and conferences: provisions special needs inmates; pharmacy procedures; psychological and psychiatric treatment upon release; transfers to Kentucky Correctional Psychiatric Center (KCPC).

(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 November 30, 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 November 30, 1995, the

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public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:040, as follows:

1. Special needs inmates (10-04-01) shall be amended for clarification with only minor changes.
2. Pharmacy procedures (13-01-01) shall be amended for clarification with only minor changes.
3. Psychological and psychiatric treatment upon release (13-02-11) shall be amended to comply with actual practice.
4. Transfers to Kentucky Correctional Psychiatric Center (KCPC) (18-11-01) shall be amended to comply with Corrections policy and procedure.

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

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

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

Date: October 12, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:060**, Northpoint Training Center: extraordinary occurrence reports; legal assistance for corrections staff; political activities of merit employees; relationships with public, media, and other agencies; offender records; taking offender record folders onto the yard; controlled visitation.

(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 November 30, 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 November 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: 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 6:060, as follows:

1. Extraordinary occurrence reports (01-05-01) shall be amended to ensure proper procedures are followed for the extraordinary occurrence reports.
2. Legal assistance for corrections staff (01-10-01) shall be amended to correct minor word changes.
3. Political activities of merit employees (01-00-01) shall be amended to correct minor word changes.
4. Relationships with public, media, and other agencies (01-17-01) shall be amended to correct minor word changes.
5. Offender records (06-01-01) shall be amended to indicate current record data.
6. Taking offender record folders onto the yard (06-01-03) shall be amended to include authorized staff members who may take folders on the yard.
7. Controlled visitation (16-02-04) shall be amended to specify who should receive written requests for visitation.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at the Northpoint Training 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.

ADMINISTRATIVE REGISTER - 865

Date: October 12, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:090**, Frankfort Career Development Center: roles of consultants, contract personnel, volunteers, and employees, employees of other agencies; inventory control; inmate accounts; fiscal management and control; fiscal management: accounting procedures; fiscal management: checking accounts; purchasing and receiving; offender records; control and accountability of flammable, toxic, caustic and other hazardous materials; searches and contraband procedures, disposition of contraband; laundry, clothing hygiene and grooming services; safety and sanitation practices and inspections; use of pharmaceutical products; medical emergencies and medical psychiatric transfers; informed consent; inmate medical screening and health evaluations; psychiatric and psychological services; parenteral administration of medications and use of psychotropic drugs; family notification: serious illness, injury, major surgery or death; chronic and convalescent care; sick call and physician's weekly clinic; management of serious clinic and infectious diseases; health education: provision of special health care needs; physicians referrals; health records; routine and emergency dental appointments; routine and emergency eye examinations; prohibiting inmate authority over other inmates; inmate grievance system; legal services program; good time credits; detention orders and protective custody requests; inmate correspondence inmate access to telephones; inmate packages; inmate classification and review; security and operation of the governmental services program; inmate work programs; academic and vocational education; privilege trips; shopping trips; recreation and inmate activities; religious services; substance abuse programs; escorted leaves; release preparation program; restoration of forfeited good time; arts and crafts 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 November 30, 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 November 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: 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. Roles of consultants, contract personnel, volunteers, and employees, employees of other agencies (01-04-01) shall be amended to provide information to outside agencies performing services at the institution.

2. Inventory control (02-02-01) shall be amended to ensure inventory is controlled properly and accurately.

3. Inmate accounts (02-09-01) shall be amended to ensure proper accounting procedures for the inmate's account.

4. Fiscal management and control (02-10-01) shall be amended to eliminate meal tickets.

5. Fiscal management: accounting procedures (02-11-01) shall be amended to eliminate meal tickets.

6. Fiscal management: checking accounts (02-12-01) shall be amended to eliminate the Trust and Agency Fund and Inmate Canteen.

7. Purchasing and receiving (02-13-01) shall be amended to comply with applicable purchasing rules and regulations.

8. Offender records (06-02-01) shall be amended to indicate current record data.

9. Control and accountability of flammable, toxic, caustic and other hazardous materials (09-03-01) shall be amended to ensure continued compliance with ACA standards.

10. Searches and contraband procedures, disposition of contraband (09-06-08) shall be amended to comply with current operating procedures.

11. Laundry, clothing hygiene and grooming services (12-03-01) shall be amended to provide adequate clothing and supplies to meet basic inmate needs.

12. Safety and sanitation practices and inspections (12-04-01) shall be amended to ensure continued compliance with applicable ACA standards.

13. Use of pharmaceutical products (13-01-01) shall be amended to correct minor word changes.

14. Medical emergencies and medical psychiatric transfers (13-01-02) shall be amended to comply with current operating procedures.

15. Informed consent (13-01-03) shall be amended to correct minor word changes.

16. Inmate medical screening and health evaluations (13-02-01) shall be amended to correct minor word changes.

17. Psychiatric and psychological services (13-03-01) shall be amended to ensure provisions for inmates requiring these services.

18. Parenteral administration of medications and use of psychotropic drugs (13-03-02) shall be amended to correct minor word changes.

19. Family notification: serious illness, injury, major surgery or death (13-05-01) shall be amended to correct minor word changes.

20. Chronic and convalescent care (13-06-01) shall be amended to ensure continued compliance with the ACA standards.

21. Sick call and physician's weekly clinic (13-08-01) shall be amended to ensure proper medical procedures in case of injury or illness.

22. Management of serious clinic and infectious diseases (13-09-01) shall be amended to include staff and inmate education.

23. Health education: provision of special health care needs (13-11-01) shall be amended to ensure continued compliance with applicable ACA standards.

24. Physicians referrals (13-13-01) shall be amended to ensure continuity of care if necessary.

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25. Health records (13-14-01) shall be amended to correct minor word changes.
26. Routine and emergency dental appointments (13-15-01) shall be amended to correct minor word changes.
27. Routine and emergency eye examinations (13-16-01) shall be amended to ensure continued compliance with the ACA standards.
28. Prohibiting inmate authority over other inmates (14-01-01) shall be amended to correct minor word changes.
29. Inmate grievance system (14-02-01) shall be amended to correct minor word changes.
30. Legal services program (14-04-01) shall be amended to ensure adherence to guidelines and documentation is completed for legal services.
31. Good time credits (15-01-01) shall be amended to ensure continued compliance with ACA and Corrections Policies and Procedures.
32. Detention orders and protective custody requests (15-04-01) shall be amended to correct minor word changes.
33. Inmate correspondence (16-02-01) shall be amended to ensure inmates are afforded proper mail privileges and that documentation is completed.
34. Inmate access to telephones (16-03-01) shall be amended to ensure continued compliance with the ACA standards.
35. Inmate packages (16-04-01) shall be amended to correct minor word changes.
36. Inmate classification and review (18-01-01) shall be amended to correct minor word changes and to add the attachments ensuring continued compliance with the ACA standards.
37. Security and operation of the governmental services program (19-01-01) shall be amended to comply with ACA standards and minor word changes.
38. Inmate work programs (19-02-01) shall be amended to ensure compliance with applicable ACA standards.
39. Academic and vocational education (20-01-01) shall be amended to ensure consistency with policies and procedures and to explain the certification and evaluation of academic and vocational programs.
40. Privilege trips (22-01-01) shall be amended to correct minor word changes.
41. Shopping trips (22-01-03) shall be amended to ensure consistency with policies and procedures and to comply with the ACA standards.
42. Recreation and inmate activities (22-02-01) shall be amended to ensure continued compliance with ACA standards.
43. Religious services (23-01-01) shall be amended to comply with ACA standards and there are minor word changes.
44. Substance abuse programs (24-02-01) shall be amended to correct minor word changes.
45. Escorted leaves (25-01-01) shall be amended to correct minor word changes.
46. Release preparation program (25-03-01) shall be amended to correct minor word changes.
47. Restoration of forfeited good time (15-01-02) was created to establish guidelines for restoration of forfeited good time.
48. Arts and crafts program (22-02-03) shall be deleted as it is included in another policy.
- (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: October 12, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:110**, Roederer Correctional Complex: staff participation in professional organizations and conferences; provisions for leave and reimbursement for expenses; temporary holding cell guidelines; public information and news media access; processing of invoices; offender records; court trips; receipt of order of appearance; food service; security; health requirements of food handlers; sanitation, living conditions, and clothing issuances; bed areas; personal hygiene items; issuance and replacement schedule; barber shop services and equipment control; insect and vermin control; suicide prevention and intervention program; emergency medical and dental care services; academic education 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 November 30, 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 November 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: 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 6:110, as follows:

1. Public information and news media access (01-18-01) shall be amended to reflect new guidelines and procedures established within the

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institution.

2. Staff participation in professional organizations and conferences: provisions for leave and reimbursement for expenses (01-09-01) shall be deleted due to the fact that this subject matter has been previously promulgated under Corrections Policy and Procedures 4.1.

3. Processing of invoices (02-04-02) shall be amended to reflect new guidelines established within the Department of Corrections.

4. Offender records (06-01-01) shall be amended to reflect new guidelines established within the institution.

5. Court trips (06-04-01) shall be amended to reflect new guidelines established within the institution.

6. Receipt of order of appearance (06-04-02) shall be amended to reflect new guidelines established within the institution.

7. Temporary holding cell guidelines (10-01-02) shall be amended to delete Attachment B as this form is no longer utilized.

8. Food service: security (11-02-01) shall be amended to reflect new guidelines established within the institution.

9. Health requirements of food handlers (11-05-02) shall be amended to reflect new guidelines established within the institution.

10. Sanitation, living condition, and clothing issuances (12-01-01) shall be amended to reflect new guidelines established within the institution.

11. Bed areas (12-01-02) shall be amended to reflect new guidelines established within the institution.

12. Personal hygiene items: issuance and replacement schedule (12-03-01) shall be amended to reflect new guidelines established within the institution regarding the issuance of personal supplies.

13. Barber shop services and equipment control (12-03-02) shall be amended to reflect new guidelines established within the institution.

14. Insect and vermin control (12-06-01) shall be amended to reflect new operational procedures within the institution.

15. Suicide prevention and intervention program (13-06-01) shall be amended to reflect new operational procedures within the institution.

16. Emergency medical and dental care services (13-06-03) shall be amended to reflect new operational procedures within the institution.

17. Academic education program (20-01-01) shall be amended to reflect new operational procedures within the institution.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at the Roederer 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: October 12, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex: inclement weather or emergency condition operation; restricted areas; regulation of inmate movement; radio escorted yard movement during eastern standard time; construction crew entry, exit and regulations; complex entry and exit; key control; transportation to courts; drug abuse and intoxicants testing; use of restraints; population counts and count documentation; development of institutional post orders; governmental services officer post orders; unit a-1 post orders; recreation post orders; entrance gate post orders; visiting area post orders; security staff general orders; dining room officer post orders; perimeter patrol; prohibiting inmate authority over other inmates; search policy and disposition of contraband; security activity logs; institutional supervisor inspections; duties and responsibilities of the shift supervisor; use of state vehicles and staff owned vehicles; inmate death; emergency communication system; licensure and training standards; health care practices; emergency medical care plan; parenteral administration of medications and use of psychotropic drugs; notification of inmate family in the event of serious illness, injury or surgery; chronic and convalescent care; inmate rights and responsibilities.

(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 November 30, 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 November 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. Inclement weather or emergency condition operation (09-01-01) shall be amended to reflect responsibility of making determination as to releasing employees during emergency conditions and inclement weather from shift supervisor to warden, deputy warden or duty officer, notifying the local television station visiting has been cancelled and minor word changes throughout to bring this policy into compliance with LRC regulations.

2. Restricted areas (09-02-01) shall be amended to reflect the inmates restriction from the gym area during visits unless assigned to work or have been called for a visit, the use of the side entrance to the kitchen area for ADA inmates.

3. Inmate pass system to restricted area (09-02-02) shall be amended to reflect minor word changes throughout to bring this policy into compliance with LRC regulations.

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4. Regulation of inmate movement (09-02-03) shall be amended to reflect inmates in a restricted area either have authorized pass or be under the direct supervision of a staff member, inmate counts be accounted for by the patrol officer or supervisor for all inmates assigned to off complex detail, minor word changes throughout to bring this policy into compliance with LRC regulations and converted ACA standards numbers from 2nd to 3rd edition.
5. Radio escorted yard movement during eastern standard time (November 1-April) (09-02-04) shall be amended to reflect pill call over at 8:30, delete references of B-1 Unit, Canteen open at night, and yard inmates visiting A-1 Unit.
6. Construction crew entry, exit and regulations (09-04-01) shall be amended to reflect the Contraband forms return to the deputy warden, written report on lost construction crew passes, and deletion of meal purchases through tickets, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition and add new Attachment B.
7. Complex entry and exit (09-04-02) shall be amended to reflect all traffic entering institutional grounds be stopped by gate office at post one, enforce post orders for gate one before allowing vehicle on the complex, approval of shift supervisor or above for searches, gate officer keep a detailed record of all inmate visitors, restriction of off duty personnel on the complex without prior approval from warden, deputy warden or captain, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
8. Key control (09-05-01) shall be amended to reflect the deletion of issuing keys to grounded motor vehicles to inmates, weekly checks by the captain for emergency keys, deletion of post office box combinations and minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
9. Transportation to courts (09-06-02) shall be amended to reflect minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
10. Drug abuse and intoxicants testing (09-07-01) shall be amended to reflect how inmates may be chosen for random sample, minor word changes throughout to bring this policy into compliance with LRC regulations.
11. Use of restraints (09-08-02) shall be amended to reflect word change from chief security officer to captain, who shall receive the incident report on use of restraints, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
12. Population counts and count documentation (09-09-01) shall be amended to reflect the deletion of additional counts at random between 8 p.m. and 12 a.m., the deletion of inmates attending chapel program during visiting hours, to change documentation of counts from Supervisor's Log to the Control Center Logs, and officers shall inform all inmates of an emergency count.
13. Development of institutional post orders (09-10-03) shall be amended to reflect the responsibility of each shift supervisor to have each officer on his shift sign and date they understand all appropriate post orders, the warden and deputy warden to review all post order annually, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
14. Governmental services officer post orders (09-10-04) shall be deleted due to this policy being an internal management policy for staff access only.
15. Unit A-1 post orders (09-10-05) shall be deleted due to this policy being an internal management policy for staff access only.
16. Recreation post orders (09-10-06) shall be deleted due to this policy being an internal management policy for staff access only.
17. Entrance gate post orders (09-10-07) shall be deleted due to this policy being an internal management policy for staff access only.
18. Visiting area post orders (09-10-08) shall be deleted due to this policy being an internal management policy for staff access only.
19. Security staff general orders (09-10-09) shall be deleted due to this policy being an internal management policy for staff access only.
20. Dining room officer post orders (09-10-10) shall be deleted due to this policy being an internal management policy for staff access only.
21. Perimeter patrol (09-13-01) shall be deleted due to this policy being an internal management policy for staff access only.
22. Prohibiting inmate authority over other inmates (09-14-01) shall be amended to reflect minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
23. Search policy and disposition of contraband (09-15-01) shall be amended to reflect a detailed description of all strip searches be logged in the strip search log by shift supervisor, outside details shall be pat frisk searched upon returning to the complex, unannounced strip search at random under the direction of the warden, deputy warden or captain, reference of KRS 520.050, 520.060 for search policy of visitors, written report on confiscated contraband be filled out prior to leaving the shift by the person who found it, the disposition of contraband items be decided by the warden, deletion of Attachments A-C and add new Attachment A.
24. Security activity logs (09-16-01) shall be amended to reflect where permanent logs shall be kept, when logs shall be reviewed by the captain, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
25. Institutional supervisor inspections (09-17-01) shall be amended to advise the warden and deputy wardens of all discrepancies on inspection reports, a copy of corrective action be forwarded to deputy warden of security, supervisors inspection be documented in the supervisors log, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
26. Use of state vehicles and staff owned vehicles (09-18-01) shall be amended to reflect the Warden shall designate parking areas for P.I. and maintenance vehicles, where keys to vehicles leaving institution be obtained, the additional responsibility of maintenance and sanitation of all state vehicles to the 8-4 Shift Lieutenant, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
27. Duties and responsibilities of the shift supervisor (09-19-02) shall be deleted due to this policy being an internal management policy for staff access only.
28. Inmate death (09-20-01) shall be amended to reflect additional security precautions, proper care of evidence, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers 2nd to 3rd edition.
29. Emergency communication system (09-22-01) shall be amended to reflect minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.
30. Licensure and training standards (13-04-01) shall be amended to reflect all request for continuing medical education be forwarded to Wardens Office for approval.
31. Health care practices (13-06-01) shall be amended to reflect minor word changes throughout to bring this policy into compliance with

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LRC regulations.

32. Emergency medical care plan (13-07-01) shall be amended to reflect some changes in the responsibilities for nurses on duty, the deletion of UKMC for emergency dental care, and the deletion of emergency care phone numbers.

33. Parenteral administration of medications and use of psychotropic drugs (13-12-02) shall be amended to reflect when administered psychotropic drugs be utilized, minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards from 2nd to 3rd edition.

34. Inmate health education (13-13-01) shall be amended to reflect information on AIDS, STD's, and hepatitis be given to inmate during initial health evaluation, and additional special counseling and education be provided through the Department of Family Practice.

35. Notification of inmate family in the event of serious illness, injury or surgery (13-17-01) shall be amended to reflect minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd edition.

36. Chronic and convalescent care (13-20-01) shall be amended to reflect the deletion of nursing and medical care being provided for inmates recuperating from certain surgical procedures.

37. Inmate rights and responsibilities (14-04-01) shall be amended to reflect the deletion of requests for an appeal, of a decision for minor rule violations.

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

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

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

Date: October 12, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex: inmate reception & orientation; structure, guidelines, and functions of the classification committee.

(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 November 30, 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 November 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: 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. Inmate reception and orientation (17-02-01) shall be amended with minor corrections for clarity.

2. Structure, guidelines, and functions of the classification committee (18-01-01) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures.

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

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

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

TRANSPORTATION CABINET

Date: November 1, 1995

Transportation Cabinet

(1) **601 KAR 1:200**, International Fuel Tax Agreement federal mandate.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation which will allow Kentucky to participate in the International Fuel Tax Agreement as mandated by Congress in its passage of 49 USC Section 31705. The administrative regulation will include notice of date of cessation of the collection of the preempted tax found in KRS 138.6601, the adoption of the IFTA "Procedures Manual" and "Audit Manual", as well as listing of other state laws which are preempted by the IFTA federal mandate.

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Kentucky's participation in the International Fuel Tax Agreement is 49 USC Chapter 317, KRS 138.227, 138.725, and 138.729.

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

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set forth for public notice the intention of the Kentucky Transportation Cabinet to cease imposing the tax in KRS 138.6601 on July 1, 1996. 49 USC Section 31705 requires that no state after September 30, 1996, may establish, maintain, or enforce a law or regulation that has a fuel use tax reporting requirement including any tax reporting form, if the requirement is not in conformance with the International Fuel Tax Agreement. Kentucky's Attorney General has issued an opinion that this federal law does preempt KRS 138.6601, effective September 30, 1996. Therefore, the last tax forms that the Transportation Cabinet can mail out for the overall collection of the taxes would be during the July 1, 1996 through September 30, 1996 tax quarter.

(d) The benefits expected from this administrative regulation are the public awareness of the federal preemption of KRS 138.6601 and the necessary adoption of the IFTA "Procedures Guide" and "Audit Manual".

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 15, 1995. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: November 1, 1995

Transportation Cabinet

(1) **601 KAR 9:020**, Demonstrator tag limitation.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation to amend the subject administrative regulation to include trailers in the list of vehicles which can be issued a license to allow dealers to demonstrate a vehicle which is for sale. Kentucky state law is unclear on whether the dealer demonstration license plates can be issued for placement on trailers and semitrailers which are being offered for sale. Because there is an expressed need in the Commonwealth for persons who wish to demonstrate the use of trailers and semitrailers which are for sale, the Transportation Cabinet intends to amend the administrative regulation to allow the dealer demonstrator tags to be issued for the use on trailers and semitrailers, as well as trucks and tractors.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1995 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to issuance of licenses for dealer demonstration is KRS 186.053.

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

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation sets a reasonable time limit for the demonstration of vehicles covered by license plates issued pursuant to KRS 186.053. It further specifies that the dealer demonstration tags are valid for use upon trucks, tractors, semitrailers and trailers.

(d) The benefits expected from this administrative regulation are allowing the motor vehicle dealers who are selling trailers and semitrailers to use the dealer demonstration tags when demonstrating those vehicles for sale.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 15, 1995. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

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Date: November 1, 1995

Transportation Cabinet

(1) **601 KAR 9:135**, Apportioned registration.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation updating the forms and procedures governing the registration of vehicles pursuant to the International Registration Plan. The updates shall also include audit requirements and will examine the bylaws of the International Registration Plan.

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

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to apportioned registration is KRS 186.050.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 186.050 requires the Transportation Cabinet to promulgate administrative regulations concerning the registration of commercial motor vehicles under the articles of the International Registration Plan. This administrative regulation sets forth the procedures to be followed in registering a commercial vehicle under the provisions of the International Registration Plan. It further clarifies when a vehicle licensed under the provisions of KRS 186.050(13) shall be deemed to be licensed under the provisions of other sections of KRS 186.050.

(d) The benefits expected from this administrative regulation are public awareness of the new forms needed to use for registration under the International Registration Plan and public awareness of the change in procedures adopted by the articles of the International Registration Plan.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 15, 1995. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: November 1, 1995

Transportation Cabinet

(1) **603 KAR 5:072**, relating to mandatory annual bus inspection.

(2) The Kentucky Transportation Cabinet has in existence an administrative regulation requiring that all buses be inspected annually by the Transportation Cabinet (603 KAR 5:072). Most of the public universities have requested that their mechanics be trained in the proper method of performing a safety inspection on vans and that the Transportation Cabinet delegate authority to the public universities to perform the safety inspections on those passenger vans covered by this administrative regulation. Their proposal is the subject of this notice of intent to promulgate an administrative regulation.

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

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to annual bus inspections is KRS 189.231 and 281.600 and 49 CFR Part 396.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 5:072, Mandatory bus inspections.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.231 authorizes the Secretary of Transportation to restrict or regulate traffic on state maintained highways in such manner as is reasonably necessary to promote the safety and convenience of the traveling public. KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations regarding safety requirements for a method of operation of motor vehicles. 49 CFR Part 396 requires periodic inspection of every commercial

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motor vehicle. The administrative regulation further delegates to the Commonwealth's eight public universities the ability to inspect their own vans which are designed to carry more than 12 but fewer than 16 passengers.

(d) The benefits expected are: An easing of the burden on universities of taking large fleets of passenger vans to the weight stations to be inspected.

(8) If any person with a disability needs an accommodation to either attend this hearing or to read/understand this notice, please contact Ms. Pullen at the above address no later than November 15, 1995.

EDUCATION PROFESSIONAL STANDARDS BOARD

Date: September 25, 1995

Education Professional Standards Board

(1) **704 KAR 20:260.** Junior ROTC personnel.

(2) The Education Professional Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1995 at 9 a.m. in Room 108, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 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: Dr. Betty Lindsey, Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for the issuance of certification for junior ROTC personnel is KRS 161.020, 161.028, and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:260, Junior ROTC personnel. This regulation was initially adopted in December 1975, and no revisions have been made since that time. The regulation requires that the applicant shall have "twenty (20) years military service"; however, in 1994 the Department of Defense began down-sizing the military making it possible for persons with less than twenty years of service to retire. Applicants are now being recommended by the appropriate branch of military service for an assignment as junior ROTC instructor in Kentucky schools with less than 20 years of military service. It is proposed to revise the regulation to eliminate the number of years of required military service; instead, require that the applicant be recommended by the appropriate branch of military service. It is also proposed to revise the curriculum required for both the senior instructor and the junior instructor.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 and 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the requirements for the issuance of the certification for junior ROTC personnel.

(d) The benefits expected from administrative regulation are: The proposed amendments are in keeping with the Department of Defense regulations for retirement from the military and the curriculum reflects the offerings available at the Kentucky teacher education institutions.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by the Division of Certification. The applications for junior ROTC certification shall be accompanied by a form DD214 which will reflect the retirement from the military. The Division of Certification staff will inform the applicant of the curriculum requirements to be completed.

Date: September 25, 1995

Education Professional Standards Board

(1) **704 KAR 20:540.** Professional certificate for administrator of pupil personnel services.

(2) The Education Professional Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1995 at 9 a.m. in Room 108, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 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: Dr. Betty Lindsey, Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for the issuance of the professional certificate for administrator of pupil personnel services is KRS 161.020, 161.028, and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:540, Professional certificate for administrator of pupil personnel services. This regulation was initially adopted in September 1989, and no revisions have been made since that time. KRS 159.080 requires that "each superintendent...shall appoint a director of pupil personnel..." Because of the low incidence of need very few persons prepare for this professional school assignment. Accordingly, some school districts are confronted with the problem of needing to employ a director of pupil personnel, but have no certified applicants. A provision has existed for many years for a one-year certificate when a person holding certification for the position of director of pupil personnel is not available; however, this provision currently is included in 704 KAR 20:100, the regulation which provides for the issuance of the professional certificate for school administration and supervision which is no longer issued and which now needs to be repealed. It is proposed to amend the regulation to provide for a one-year probationary certificate for administrator of pupil personnel services and to identify the qualifications for the one-year certificate as well as renewal requirements. In addition, the proposed revision shall identify the Education Professional Standards Board as having statutory authority, shall repeal the prerequisite of a standard teaching certificate, and shall include the admissions criteria and curriculum standards into this regulation which are currently incorporated by reference in 704 KAR 20:005. It is also proposed that 704 KAR 20:100 be repealed.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of program of preparation approved by the Education Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures approved by the Education Professional Standards Board. This regulation establishes the certificate for administrator of pupil personnel services.

(d) The benefits expected from administrative regulation are: The proposed amendment shall provide a way to recruit a person to the position of director of pupil personnel when a fully certified person is not available. Other revisions will identify the Education Professional Standards Board as the statutory authority for issuing the certificate and will reflect former action to discontinue the issuance of the standard teaching certificates.

(e) The administrative regulation will be implemented as follows: The regulation will be communicated to colleges and universities which have approved programs for administrator of pupil personnel services. As the need arises, Division of Certification staff will inform local school districts about the regulations and procedures for applying for the one-year probationary certificate.

Date: September 26, 1995

Education Professional Standards Board

(1) **704 KAR 20:670.** Kentucky teaching certificates.

(2) The Education Professional Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1995 at 9 a.m. in Room 108, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 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: Dr. Betty Lindsey, Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishment of standards and requirements for obtaining a teaching certificate is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will specify time lines for implementation of the new certificates required in this regulation, amend provisions that additional certification may be added to an existing certificate by completion of assessments, and add a standard identifying the need for beginning teachers to demonstrate competency in content knowledge.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 and 161.030 vest authority for the issuance and renewal of certificates for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the required times for ceasing to admit students to old programs, begin admitting students to new programs, and completion of old programs by students already admitted; amends the provision that additional certification may be added to existing certificates through completion of assessments; and adds an eighth standard on content for new teachers.

(d) The benefits expected from administrative regulation are: Timely advice to institutions of higher education in order that programs leading to new certificates may be implemented and students appropriately advised, amendment of provisions for use of assessments to comply with

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legal requirements, and specification of an expectation for new teachers regarding competency in content of the area of the certificate.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by the Divisions of Certification, Testing and Internship, and Teacher Education. Communication will be sent to institutions of higher education, local school districts, and professional organizations. Information brochures on standards for new teachers have already been developed and disseminated.

Date: September 26, 1995

Education Professional Standards Board

- (1) **704 KAR 20:690**. Kentucky Beginning Teacher Internship Program.
- (2) The Education Professional Standards Board intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1995 at 9 a.m. in Room 108, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 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: Dr. Betty Lindsey, Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the Beginning Teacher Internship Program is KRS 161.028 and 161.030.
 - (b) The administrative regulation that the Education Professional Standards Board intends to promulgate will supersede an existing administrative regulation, 704 KAR 20:320, Beginning Teacher Internship Program. During 1994-95 the Education Professional Standards Board approved use of a pilot internship program based on the "New Teacher Standards" adopted by the board. The proposed regulation provides for the use of "New Teacher Standards for Preparation and Certification" as the basis for support and assessment of teacher interns, the addition of a representative four-person committee to review complaints by interns and specification of criteria upon which complaints may be based, simplifies language, and sequences procedural requirements.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.030 requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking their initial certification in Kentucky shall serve a one (1) year internship. This regulation serves to implement the statutory provisions for the beginning teacher internship by establishing the uniform statewide procedures and processes necessary to carry out the intent of the legislation.
 - (d) The benefits expected from administrative regulation are: Alignment of the intern program with standards (specifying knowledge and skills for beginning teachers) that serve as the foundation for preparation and evaluation of teachers from entry into the preservice program through completion of the intern program. In addition, the regulation provides for a representative committee review of complaints made by interns and specifies criterion for review of complaints.
 - (e) The administrative regulation will be implemented as follows: Institutions of higher education, local school districts, and professional organizations will be informed of the provisions of the regulation. Training will be conducted as required by regulation for members of teacher internship committees and materials will be distributed to teacher interns. The Education Professional Standards Board will appoint the committee to review complaints from interns, and the Office of Teacher Education and Certification will manage program implementation.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

Date: October 13, 1995

Public Protection and Regulation Cabinet

Department of Insurance

- (1) Regulation Number and Title; or Subject Matter if New: **806 KAR 3:160**, Life reinsurance agreements.
- (2) The Public Protection and Regulation Cabinet, Department of Insurance, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1995, at 10 a.m., at the Department of Insurance, 215 W. Main 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 November 30, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Attention: Carla H. Montgomery.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to life reinsurance agreements is KRS 304.2-110.

(b) The administrative regulation that the Department of Insurance intends to promulgate will amend 806 KAR 3:160, Life reinsurance agreements. It will add accident and health insurers to this administrative regulation. It will provide further requirements to prevent insurers from using life reinsurance agreements as to distort the true financial condition of an insurer.

(c) The necessity and uncton of the proposed administrative regulation is as follows: The amendments are necessary to identify more situations where companies may be using reinsurance improperly. It also applies the administrative regulation to health and accident insurers as well as life insurers. The National Association of Insurance Commissioners requires these amendments to continue accreditation with that organization.

(d) The benefits expected from this administrative regulation are: An insurer's financial statements will more accurately reflect a companies financial condition by eliminating improper reinsurance agreements.

(e) The administrative regulation will be implemented as follows: The department will continue to look at reinsurance through annual statements and financial examinations in the same way as the original administrative regulation. However, the amendment sets forth more examples where liability cannot be reduced or assets established to prevent a company from using reinsurance to hide its true financial condition. Certain agreements will have to be filed with the commissioner. The insurer's actuary shall consider this administrative regulation when determining the proper credit in financial statements.

Date: October 13, 1995

Public Protection and Regulation Cabinet

Department of Insurance

(1) Regulation Number and Title; or Subject Matter if New: **806 KAR 5:025**, Credit for reinsurance.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1995, at 10 a.m., at the Department of Insurance, 215 W. Main 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 November 30, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to credit for reinsurance is KRS 304.2-110.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will set forth rules and procedural requirements for carrying out the provisions of KRS 304.5-140.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation is necessary to set forth rules and procedural requirements for carrying out the provisions of KRS 304.5-140. It sets forth the requirements for trust agreements and letters of credit relating to reinsurance. This administrative regulation is also required by the National Association of Insurance Commissioners.

(d) The benefits expected from this administrative regulation are: The administrative regulation will help define the relationships between a ceding insurer and an assuming insurer and a trustee. The administrative regulation sets forth conditions and parameters for reinsurance, trust agreements, letters of credit and other instruments involved when companies reinsure with unlicensed companies under KRS 304.5-140(2)(d) and (3).

(e) The administrative regulation will be implemented as follows: The department will utilize this administrative regulation in financial exams of insurance companies and to help administer KRS 304.5-140.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction

Date: October 11, 1995

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 7:100** - The Kentucky Building Code.

(2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation cited above.

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, November 28, 1995, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to November 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, 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's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.040(7) and 198B.050.

(b) The department intends to amend 815 KAR 7:100, The Kentucky Building Code, by proposing the following changes:

1. "Section 307.8, Exception #3, of the 1994 Edition of the Kentucky Building Code by proposing language "Buildings and structures occupied for the storage of less than 10,000 ~~or more~~ vehicle tires weighing approximately 25 pounds (11 kg) each, provided that such buildings are equipped throughout with an automatic sprinkler system in accordance with Section 906.2.1."

2. "Section 918.5 Sprinklered buildings exception: Buildings equipped throughout with an automatic sprinkler system in accordance with Section 906.2.1 or Section 906.2.2 are not required to be equipped with an automatic fire detection system, but are required to be equipped with a fire protective signaling system that conforms to Section 917.0. This exception does not apply to ~~Use Groups 1-2 and 1-3,~~ high hazard use groups in accordance with Section 417.5.3, to special amusement buildings in accordance with Section 413.0, or to single-station smoke detectors as required in Section 919.3."

3. "Section 923.2 Fire protective signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.
2. Health Care Facilities licensed by the Cabinet for Human Resources."

Existing Exceptions Deleted

4. Amend Chapter 35, Referenced Standards, of the 1994 Kentucky Building Code by updating the edition of the National Electrical Code to the "1996" edition replacing the 1993 edition.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 198B.040(7), the Kentucky Board of Housing, Buildings and Construction promulgated and adopted a uniform state building code establishing standards for construction of buildings in the state.

(d) The benefits expected from this administrative regulation are: The first three proposed amendments above correct editorial errors not noted during compilation and correct inconsistencies between certain provisions and technical clarifications in the Code. The last proposed amendment updates the National Electrical Code to the most recent edition available and it is necessary to keep the Code as current and up-to-date as possible.

(e) This administrative regulation will be implemented by the department's plan reviewers and field inspectors.

Date: October 11, 1995

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 10:046**, Repeal of 815 KAR 10:045.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, November 28, 1995, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to November 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, 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's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.300.

(b) The administrative regulation that the department intends to promulgate will repeal 815 KAR 10:045. The repeal administrative regulation is 815 KAR 10:046.

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(c) The necessity and function of the proposed administrative regulation is as follows: Information contained in 815 KAR 10:045 has now been incorporated in the Kentucky Fire Prevention Code, 815 KAR 10:050.

(d) The benefits expected from this administrative regulation are: 815 KAR 10:045 is no longer necessary as a separate administrative regulation since the material is now contained in a more appropriate location.

(e) This administrative regulation will be implemented by the Division of Fire Prevention; State Fire Marshal's Office.

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

Date: October 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of State and Local Health Administration

Local Health Personnel Merit System Branch

(1) **902 KAR 8:080**, Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

(2) The Cabinet for Human Resources, Department for Health Services, Division of State and Local Health Administration intends to amend the administrative regulation cited above.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 080, Sections 8 and 9. The amendments are primarily editorial by incorporating the statutory references as appropriate and other revisions to assist in interpretation. The amendments make the language governing the extension of the initial probationary governing the initial probationary period and the probation period following promotion the same. The probationary period may be extended if an employee has absences of twenty or more days during the probationary period.

(c) The necessity and function of the proposed administrative regulation is as follows: The amendments primarily are editorial to clarify language and provide for better interpretation. The amendments also provide consistency in those situations where a probationary period may be extended.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be able to administer a uniform and consistent procedures for the extension of the probationary period for all health departments under the merit system.

(e) The administrative regulation will be implemented as follows: The Department for Health Services currently implements the administrative regulation through; (1) written updates to those individuals responsible for initiating personnel actions (2) training sessions for local health department directors and administrative staff and (3) regional training conferences. The proposed amendments will be implemented the same way.

Date: October 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of State and Local Health Administration

Local Health Personnel Merit System Branch

(1) **902 KAR 8:090** Promotion, transfer, and demotion of local health department employees.

(2) The Cabinet for Human Resources, Department for Health Services, Division of State and Local Health Administration intends to amend

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the administrative regulation cited above.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the promotion, transfer, and demotion of local health department employees.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 8:090, by adding the statutory authority provided by the 1994 General Assembly in establishing KRS 211.1755 which provides the authority for the Cabinet for Human Resources to administer a personnel program for local health departments.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation establishes standards which are used by the cabinet in the review of promotions, transfers, and demotions of employees which are applied uniformly for all local health departments if these actions were to be requested.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will have uniform and consistent standards applicable to all local health departments.

(e) The administrative regulation will be implemented as follows: Personnel actions (promotions, transfers, and demotions) submitted by local health departments will be reviewed by the cabinet using the standards.

Department for Social Insurance Office of the Division of Management and Development

Date: October 13, 1995

Cabinet for Human Resources

Department for Social Insurance

Office of the Division of Management and Development

(1) **904 KAR 2:410.** Child support collection and distribution.

(2) The Cabinet for Human 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 November 30, 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 November 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: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance or Office of the Division of Management and Development, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40601.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the collection and distribution of child support

collections is KRS 194.050; 205.710-205.800; 405.520; 186.570.

(b) The administrative regulation that the Cabinet for Human Resources intends to promulgate will amend 904 KAR 2:410, Child support collection and distribution. It will provide guidance for the calculation and application of arrearage payments, and the process of distribution of these collections.

(c) The necessity and function of the proposed administrative regulation is as follows: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. This administrative regulation sets forth the procedures for collection and distribution of child support payments.

(d) The benefits expected from administrative regulation are: This regulation shall provide additional information concerning the repayment schedule of arrearages.

Department for Medicaid Services

Date: September 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 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 November 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: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:009. This administrative regulation is being amended to revise the incorporated by reference Physician Manual to correspond with the companion administrative regulation 907 KAR 1:010, Payments for physicians' services, which contains reimbursement changes which are effective September 1, 1995. The administrative regulation also contains an amendment effective December 1, 1995 to exempt services provided in an emergency room setting from KenPAC authorization.

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

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

Date: September 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 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 November 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: 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.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for physicians' services are KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a-d, 1396s.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:010. For services provided on or after September 1, 1995, the department is proposing to reimburse physicians the lesser of the actual billed charge or at the standard fixed fee of \$870 for vaginal delivery only services and cesarean delivery only services.

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

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

Date: October 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 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 November 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: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for hospital inpatient services is KRS 194.050, 205.640, 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1296 a, b, d, r-4.

(b) The administrative regulation 907 KAR 1:013, Payments for hospital inpatient services, that the Department for Medicaid Services intends to amend will show that hospitals have five (5) months rather than three (3) months after the close of the hospital's fiscal year, and to show that rate setting shall be done using the cost report available for November 1 preceding the rate year.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to provide for conformity of cost reporting between Medicare and Medicaid and to allow additional time for rate setting to ensure adequacy and accurateness of facility payment rates.

(d) The benefits expected from administrative regulation are: The facilities will have more time to complete cost reports so as to ensure accuracy, and the agency will have more time to set rates which will help to ensure accuracy and integrity of the rate setting process.

Date: October 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:140**, Alternative intermediate services for individuals with mental retardation or developmental disabilities (AIS-MR-DD).

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 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:

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 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: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Program Development and Budget, CHR Building, Third Floor East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to alternative intermediate services for individuals with mental retardation or developmental disabilities are KRS 194.050, 42 CFR 441 subpart G, and 42 USC 1396 a, b, d, m.
- (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:140. The Department for Medicaid Services intends to amend this existing administrative regulation to remove the language that the Office of the Inspector General is the survey agent. It revises policy, establishes a waiting list and due process procedures for eligible clients. It will, upon approval of the waiver by the Health Care Financing Administration, revise services and adjust the payment methodology. It should make the program more accessible to AIS-MR-DD services by its clients.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes an equitable procedure for accessing AIS-MR-DD services and implements due process procedures for its clients.
- (d) The benefits expected from administrative regulation are: Equal access to services and clearly defined due process procedures.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
31 KAR 5:020E

This emergency administrative regulation amends an existing administrative regulation describing the placement of voting machines so as to prevent unlawful activity. This emergency administrative regulation is needed in order to protect the secrecy of the voters' selections when using certain machines in the November, 1995, general election and, therefore, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
BOB BABBAGE, Chairman

GENERAL GOVERNMENT CABINET
State Board of Elections

31 KAR 5:020E. Placement of voting machines.

RELATES TO: KRS 117.065

STATUTORY AUTHORITY: KRS 117.015(1), 117.035(1)

EFFECTIVE: October 12, 1995

NECESSITY AND FUNCTION: County boards of elections are required to select voting locations. This administrative regulation describes the placement of voting machines so as to prevent unlawful voting activity.

Section 1. Where polling is conducted by the voters' operation of a machine, whether mechanical or electronic, the machine shall be positioned so that all persons using the machine for voting are visible to the clerk of the election and to the voters waiting to use the machine.

Section 2. Where polling is conducted at a machine which employs a curtain or similar device to protect the secrecy of the voters' selections, the machine shall be placed so that all persons entering the area behind the curtain are visible to the clerk of the election and to the voters waiting to use the machine.

Section 3. Where polling is conducted by paper ballot or by the use of paper cards as part of an electronic voting system, the tables or desks used by the voters in filling out the ballots or cards shall be positioned so that all persons filling out the ballots or cards are visible to the clerk of the election and to the voters waiting to vote.

Section 4. In no case shall the county board of elections authorize the placement of voting machines in a separate room ~~for area separated by a wall or other obstruction~~ from the area occupied by the clerk of the election and the voters waiting to vote.

BOB BABBAGE, Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 12, 1995 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: George Russell

(1) Type and number of entities affected: 120 county boards of election.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of living or employment in Kentucky as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of doing business in Kentucky as a result of this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There are no direct or indirect costs or savings on compliance, reporting, and paperwork requirements as a result of this administrative regulation.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the State Board of Elections as a result of this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing paperwork:

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements for the State Board of Elections as a result of this administrative regulation.

(4) Assessment of anticipated effects on state and local revenues: There is no anticipated effect on state and local revenues as a result of this administrative regulation.

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

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

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because it was unnecessary.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation is 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 are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation must apply uniformly throughout the state.

STATEMENT OF EMERGENCY
32 KAR 1:170E

KRS 121A.050(1) and (2) imposes a \$500 limit on contributions made by political party executive committees to slates of candidates for governor and lieutenant governor, while parties may make unlimited contributions to candidates for other statewide offices. Because the party executive committees traditionally engage in activities in support of all party nominees, including nominees for governor and lieutenant governor, it is necessary to promulgate this administrative regulation to regulate party activities to ensure that the contribution limit applicable to slates of candidates for governor and lieutenant governor is strictly enforced. 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 1:170E. Political party activities.

RELATES TO: KRS 121A.050(1), (2)
STATUTORY AUTHORITY: KRS 121A.060(2)(d)
EFFECTIVE: October 10, 1995

NECESSITY AND FUNCTION: KRS 121A.050(1) and (2) imposes a \$500 limit on contributions made by political party executive committees to slates of candidates for governor and lieutenant governor, while parties may make unlimited contributions to candidates for other statewide offices. Because the party executive committees traditionally engage in activities in support of all party nominees, including nominees for governor and lieutenant governor, it is necessary to promulgate this emergency administrative regulation to regulate party activities to ensure that the contribution limit applicable to slates of candidates for governor and lieutenant governor is strictly enforced.

Section 1. (1) Political party executive committees may include slates of candidates for governor and lieutenant governor in general party correspondence provided that the communication is for informational purposes and is sent to individuals on the party's mailing list. The executive committee shall not conduct mailings to individuals based upon a mailing list provided by a campaign committee. Slates of candidates may also be mentioned in communications which advertise an event sponsored by the political party. However, if an event is held primarily for the benefit of a gubernatorial slate, advertising costs exceeding \$100 shall be reported as a contribution to the slate. An executive committee shall not make reference to a slate of candidates in connection with direct mail and telemarketing fundraising activities unless all other party nominees are also included. No party advertisement or communications which include all candidates for statewide office shall display the name of a single candidate or slate of candidates in a manner which places greater emphasis on the name of the candidate or slate in comparison to other names included in the advertisement or communication.

(2) Campaign materials provided to a political party by campaigns of party nominees or slates of candidates for governor and lieutenant governor may be displayed in the state headquarters, provided that no cost associated with the production of such materials is paid by the political party.

(3) A political party executive committee may engage in party correspondence to members of the party which promote the party generally rather than a slate of candidates specifically. A party executive committee may also engage in general get-out-the-vote activities which encourage voter participation, provided that all party candidates are included or that the party itself is being promoted. Publication of information written by nominees of a party in a published newsletter which expresses the views of a slate of candidates shall not constitute an advertisement on behalf of the slate, and shall not be deemed a contribution to that slate.

(4) A political party executive committee may sponsor election night activities, provided that the event includes all party candidates for statewide office.

JOSEPH H. TERRY, Chair

APPROVED BY AGENCY: October 9, 1995

FILED WITH LRC: October 10, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation affects political parties, slates of candidates for governor and lieutenant governor, as well as all candidates for statewide office.

(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: No additional paperwork and reporting requirements will result from this administrative regulation.

2. Second and subsequent years: No additional paperwork and reporting requirements will result from this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The only additional costs would be those associated with staff time devoted to investigations of alleged violations.

2. Continuing costs or savings: The only additional costs would be those associated with staff time devoted to investigations of alleged violations.

3. Additional factors increasing or decreasing costs: Costs will fluctuate in direct proportion to the number of investigations required.

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements will result from this administrative regulation.

(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: Costs associated with this administrative regulation will be absorbed through the general funds appropriated to the agency.

(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: The provisions of this administrative regulation represent the agency's best efforts to see that the purpose of the public finance law are enforced.

(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:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied because the provisions of the campaign finance laws treat all parties in a uniform manner.

STATEMENT OF EMERGENCY

200 KAR 22:090E

200 KAR 22:090E should be enacted as an emergency administrative regulation to implement the provisions of KRS 18A.430(1) which require that each pilot agency participating in the Pilot Personnel Program shall develop and promulgate by administrative regulation a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. This administrative regulation promulgates the comprehensive employment manual of the Workforce Development Cabinet's Department for the Blind for use in the Pilot Personnel Program, as approved by the Personnel Steering Committee. Time is of the essence because under KRS 18A.430(2)(b) pilot programs are of limited duration and will expire no later than July 15, 1998. Moreover, the Personnel Steering Committee is required by KRS 18A.425(2) to submit a comprehensive report to the Governor at least 60 days prior to the 1996 General Assembly. Therefore, this administrative regulation should be approved on an emergency basis so that the Pilot Personnel Program of the Department for the Blind can be implemented without delay. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor

CRIT LUAllen, Secretary

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

200 KAR 22:090E. Comprehensive Employment Manual of the Workforce Development Cabinet's Department for the Blind for Use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)

STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)

NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. Pursuant to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the administrative regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This administrative regulation establishes the Comprehensive Employment Manual of the Department for the Blind for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Department for the Blind has been approved to participate in the Pilot Personnel

Program authorized by KRS 18A.400 to 18A.450. Therefore, pursuant to KRS 18A.430(1), the conditions of employment for employees in the Department for the Blind are set out in the "Employee Handbook of the Department for the Blind for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Department for the Blind for Use in the Pilot Personnel Program" revised January 1995, ("Employee Handbook") is incorporated by reference.

(2) The "Employee Handbook" may be inspected, copied, or obtained at the Workforce Development Cabinet, Department for the Blind, 209 St. Clair, 4th Floor, Frankfort, Kentucky 40601, c/o Denise Placido, Project Coordinator, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: October 13, 1995

FILED WITH LRC: October 13, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Assistant Director

(1) Type and number of entities affected: This administrative regulation will affect all employees in the Department for the Blind who are participating in the Pilot Personnel Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

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

1. First year following implementation: Pursuant to KRS 18A.430(1)(a), pilot programs are already required to develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit. This regulation merely promulgates the employment manual of the Department for the Blind 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 with, 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 in the Department for the Blind who are participating in the Pilot Personnel Program.

STATEMENT OF EMERGENCY 907 KAR 1:009E

This emergency administrative regulation is being amended to revise the incorporated by reference Physician Manual to correspond with the companion administrative regulation 907 KAR 1:010E, Payments for physicians' services, which contains reimbursement changes effective September 15, 1995. This action must be taken on an emergency basis in order to protect the public health by ensuring medically necessary medical services are available on a timely basis for the Medicaid eligible population. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 30, 1995 since this administrative regulation revises the incorporated by reference Physician Manual to correspond with the companion administrative regulation 907 KAR 1:010E, Payments for physicians' services, which contains reimbursement changes effective

September 15, 1995. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON JONES, Governor
MASTEN CHILDERS, II, Secretary

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

907 KAR 1:009E. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50

EFFECTIVE: September 19, 1995

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

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) For purposes of the Medicaid Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

(3) Covered physicians' services and service limitations are shown in the Physician Manual.

Section 2. Physicians Manual. The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. The Physician Manual, revised September 15, 1995 [~~October 15, 1994~~], incorporated by reference in this administrative regulation may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the [an] appropriate fee allowed by 200 KAR 1:020 [~~which shall not exceed approximate cost~~].

Section 3. Additional Limitations. (1) A patient placed in "lock-in" status due to overutilization shall receive services only from his lock-in provider except in the case of emergency or referral.

(2) Laboratory procedures.

(a) Laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule.

(b) The professional component of physician laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of preparations used in injections shall not be considered a covered benefit, except as specified in the Physician Manual.

(4) Telephone contacts with patients shall not be considered a covered benefit.

(5) Services performed or recipient contacts made exclusively by

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physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

Section 4. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

MASTEN CHILDERS II, Commissioner and Secretary
APPROVED BY AGENCY: September 14, 1995
FILED WITH LRC: September 19, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All physicians participating in the Medicaid Program who furnish delivery-related services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Reflected in companion reimbursement regulation 907 KAR 1:010E, Payments for physicians' services, filed at the same time as this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: (Cost)

2. Continuing costs or savings: (Cost)

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: See companion reimbursement regulation 907 KAR 1:010E, filed at the same time as this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See companion reimbursement regulation 907 KAR 1:010E, filed at the same time as this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: Necessary services might not be rendered.

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This administrative regulation is being amended to revise the incorporated by reference Physician Manual to correspond with the changes in the companion reimbursement regulation 907 KAR 1:010E, filed at the same time.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY

907 KAR 1:010E

This emergency administrative regulation is being amended effective September 15, 1995 to reimburse physicians the lesser of the actual billed charge or at the standard fixed fee of \$870 for vaginal delivery-only services and cesarean delivery-only services. This action must be taken on an emergency basis in order to protect the public health by ensuring medically necessary medical services are available on a timely basis for the Medicaid eligible population. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 30, 1995 as follows: to reimburse physicians the lesser of the actual billed charge or at the standard fixed fee of \$870 for vaginal delivery-only services and cesarean delivery only services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON JONES, Governor

MASTEN CHILDERS, II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:010E. Payment for physicians' services.

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a-d, s

EFFECTIVE: September 19, 1995

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

Section 1. Definition. (1) "Resource-based relative value scale (RBRVS) unit" is a value based on current procedural terminology (CPT) codes established by the American Medical Association assigned to the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

(2) "Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. (1) Payment for covered physicians' services shall be based on the physicians' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet using a Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) based on the Harvard 1992 RBRVS Study. If there is no RBRVS based fee the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology. Fixed upper limits not determined in accordance with the principle shown in this subsection (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. The dollar conversion factors shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia <u>(except delivery-related)</u>	\$25.15
All Other Services	\$25.80

Section 3. Reimbursement Exceptions. (1) Except as otherwise specified in this section, physicians shall be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(2) Except as otherwise specified in this section, physicians shall be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services shall reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

(3) Effective October 1, 1994, physicians shall be provided drugs

for specified immunizations through the pediatric vaccine distribution program to be administered by the Department for Health Services in accordance with the terms, standards, and criteria described in 42 USC 1396a(a)(62) and 1396s.

(4) Payments for specified obstetrical services provided on or after September 15, 1995 ~~[July 1, 1994]~~, shall be reimbursed the lesser of [at] the actual billed charge or at the standard fixed fee paid by type of procedure. The obstetrical services and fixed fees are: [up to a maximum of \$900.]

Vaginal delivery only - \$870.

Vaginal delivery including postpartum care - \$900.

Cesarean delivery only - \$870.

Cesarean delivery including postpartum care - \$900.

(5) For delivery-related anesthesia services provided on or after July 1, 1995, a physician shall be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

<u>Vaginal delivery</u>	<u>\$200</u>
<u>Epidural single</u>	<u>315</u>
<u>Epidural continuous</u>	<u>335</u>
<u>Cesarean section</u>	<u>320</u>

(6) ~~[(6)]~~ Payment for individuals eligible for coverage under Medicare, Part B is made in accordance with Sections 1 and 2 of this administrative regulation and subsections (1) through (4) and subsection (6) of this section within the individual's deductible and coinsurance liability.

(7) ~~[(6)]~~ Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physicians' usual and customary actual billed charges up to 125 percent of the fixed upper limit per procedure established by the cabinet.

(8) ~~[(7)]~~ For services provided on or after July 1, 1990, physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

(9) ~~[(8)]~~ Procedures specified by Medicare and published annually in the Federal Register and which are commonly performed in the physician's office are subject to outpatient limits if provided at alternative sites and shall be paid adjusted rates to take into account the change in usual site of service.

(10) Payments for the following procedure shall be paid the lesser of the actual billed charge or at a fixed upper limit for that procedure as established by the cabinet: Injection procedure for chemonucleolysis of intervertebral disk(s), lumbar - \$793.50.

Section 4. Implementation Date. The changes shown in this administrative regulation shall be applicable with regard to services provided on or after September 15, 1995 ~~[October 15, 1994]~~.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

MASTEN CHILDERS II, Commissioner and Secretary
 APPROVED BY AGENCY: September 14, 1995
 FILED WITH LRC: September 19, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All physicians participating in the Medicaid Program who furnish delivery-related services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$150,000 (September 1 change) (cost); \$3,156,000 (July 1 change) (cost).

2. Continuing costs or savings: \$150,000 (September 1 change) (cost); \$3,156,000 (July 1 change) (cost).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure medical services are more widely available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could negatively affect the provision of care under Medicaid.

(c) If detrimental effect would result, explain detrimental effect: Necessary services might not be rendered.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky

has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

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

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

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

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

STATEMENT OF EMERGENCY

907 KAR 1:013E

This emergency administrative regulation is being promulgated to show that hospitals have five (5) months (rather than three (3) months) after the close of the facility's fiscal year to file cost reports, and to show that rate setting shall be done using the cost reports available as of November 1, preceding the rate year. This administrative regulation also contains material implementing payment rate changes relating to disproportionate share hospital payments effected by previous emergency administrative regulations. In addition, the language in the administrative regulation which resulted in the attachment of a statement of deficiency has been deleted. This action must be taken on an emergency basis to ensure that access to health care services is maintained by establishing a process which allows for greater accuracy in rate setting. This administrative regulation differs significantly from the emergency administrative regulation filed on May 12, 1995 by providing for the extension of time for filing cost reports, the use of cost reports available as of November 1, preceding the rate year, and the deletion of material which resulted in the attachment of a statement of deficiency. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON JONES, Governor

MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES

Department for Medicaid Services

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

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

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

EFFECTIVE: September 28, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources, Department for Medicaid Services 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 hospital inpatient services. The language in the previous emergency administrative regulation which resulted in the attachment of a statement of

deficiency has been deleted.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Acute care hospital" means a hospital appropriately licensed and certified to provide acute care hospital services.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Capital costs" means capital related expenses, i.e., insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "Charity care" means care provided for individuals who have no source of payment for the services rendered, including personal or third-party resources.

(5) "Cost basis" means the total allowable Medicaid inpatient costs incurred by the provider in the base year.

(6) "Disproportionate share hospitals (DSH)" means hospitals that meet the criteria specified in 42 USC 1396r-4(d) and one (1) of the following criteria:

(a) As specified in 42 USC 1396r-4(b); or

(b) Hospitals that have Medicaid utilization of one (1) percent or higher.

(7) "DRI" means Data Resources, Inc.

(8) "Exceptionally high costs or long lengths of stay" means for:

(a) Newborns, those costs and days of stay in a nondisproportionate share hospital that are thirty (30) days beyond the date of discharge for the mother, and for all other children under age one (1) after thirty (30) days from the date of admission; or

(b) Newborns, those costs and days of stay in a disproportionate share hospital that are thirty (30) days beyond the date of discharge for the mother, and for all other children under age six (6) after thirty (30) days from the date of admission.

(9) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the rate year.

(10) "Indigent days" means days in excess of fourteen (14) covered days for Medicaid recipients and all days of service provided to individuals eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days, with eligibility determined in accordance with criteria shown in 907 KAR 1:635.

(11) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Pediatric teaching hospital" means a hospital with a pediatric services program which is used as the primary medical teaching facility for the medical students at the University of Kentucky or the University of Louisville.

(13) "Professional component costs" and "professional costs" means those professional costs resulting from services provided by anesthesiologists, cardiologists, electroencephalographers, pathologists, radiologists, psychiatrists and emergency room physicians.

(14) "State teaching hospital" means a hospital which is owned or operated by a state-supported university with a medical school. As of the date of this administrative regulation, Kentucky's state teaching hospitals are those owned or operated by the University of Kentucky or the University of Louisville.

(15) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year-end and the beginning of the rate year.

(16) "Type I hospital status" means those in-state disproportionate share hospitals with 100 beds or less that participate in the Medicaid Program.

(17) "Type II hospital status" means those in-state disproportionate share hospitals with 101 beds or more that participate in the Medicaid Program, except for those hospitals that meet the criteria to be defined as a Type III or Type IV status hospital.

(18) "Type III hospital status" means those in-state disproportionate share state university teaching hospitals that have requested a Type III status which has been approved by the Department for Medicaid Services. Type III status shall be granted if the hospital agrees as a part of its request for a Type III status to forego any local or state government contributions for charity care and to provide up to 100 percent of the state matching funds necessary to secure federal financial participation for Medicaid disproportionate share hospital payments to be made during the period of time the hospital is designated as a Type III status hospital.

(19) "Type IV hospital status" means those in-state disproportionate share hospitals participating in the Medicaid Program that are state-owned psychiatric hospitals.

(20) "Type V hospital status" means those out-of-state disproportionate share hospitals participating in the Medicaid Program.

(21) "Universal rate year" or "rate year" means the rate year, under the prospective payment system, beginning January 1 for which payment rates are established for all hospitals for a twelve (12) month period regardless of the hospital's fiscal year end.

(22) "Upper payment limit" means the maximum amount the Medicaid Program will pay for an inpatient day of care under specified circumstances; upper payment limits may vary based on factors, such as utilization factors, teaching hospital status, and age of the patient. [Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of medical assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.]

Section 2. Material Incorporated by Reference. (1) The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Medicaid Reimbursement Manual for Hospital Inpatient Services" dated September, 1995 which is incorporated by reference in this administrative regulation.

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

(3) The Medicaid Reimbursement Manual for Hospital Inpatient Services shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky, 40621 and is available for review during the normal business week, Monday through Friday, from 8 a.m. through 4:30 p.m., excluding state holidays. Each participating in-state hospital provider shall be provided one (1) copy of the manual and appropriate manual updates. Additional copies may be obtained from that office upon payment of the appropriate fee in accordance with 200 KAR 1:020. [Establishment of Payment Rates.

(1) The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised November 20, 1993, which is incorporated by reference in this administrative regulation.

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

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

Section 3. Acute Care Hospital, Rehabilitation Hospital, and Psychiatric Hospital Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medicaid through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by

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efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. [General Description of the Payment System. The following provisions shall be applicable for purposes of setting inpatient hospital payment rates:]

Section 4. Use Of Prospective Rates. (1) Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.

(a) The prospective rate shall include, both routine and ancillary costs.

(b) Once a base year is selected for setting a rate, that base year shall not change. The prospective rate shall not be subject to retroactive adjustment, except for facilities with a rate based on unaudited data. These facilities shall have their rate appropriately revised for the rate year when an audited cost report for the base year is received from the fiscal intermediary or an independent audit firm under contract with the Department for Medicaid Services.

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

(2) Overpayments shall be recouped by:

(a) Payment from the provider of the amount of the overpayment; or

(b) The withholding of the overpayment amount from future payments due the provider.

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

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

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

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

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

(e) Overpayments shall be recouped:

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

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

Section 5. Use of a Universal Rate Year. (1) A universal rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The most recent Medicaid cost report available as of November 1, of each year preceding the rate year, shall be used for rate setting.

(2) Policy changes may affect rates; however, this shall not change the rate year.

(3) Hospitals shall not be required to change their fiscal years to conform with rate years.

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

years.]

Section 6. Trending of Cost Reports. The following policies shall be used for the trending of cost reports.

(1) Allowable Medicaid cost, excluding capital cost, as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year in order to update a facility's Medicaid costs.

(2) The trending factor to be used shall be the inflation factor prepared by Data Resources, Inc. (DRI) for the period being trended.

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

Section 7. Indexing for Inflation. (1) After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the universal rate year.

(2) The indexing factor to be used shall be the inflation factor prepared by DRI for the rate year.

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

Section 8. Peer Grouping. For rate setting purposes, hospitals shall be grouped with other hospitals in accordance with the following provisions:

(1) The peer groupings shall be based on the number of beds licensed pursuant to KRS Chapter 216B on November 1 preceding the rate year.

(2) The peer groupings shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more.

(3) State teaching hospitals owned or operated by the University of Kentucky or the University of Louisville shall not be included in the arrays, but shall be subject to the upper limits for facilities with 401 beds or more. If a designated state teaching hospital is affiliated with the University of Kentucky or the University of Louisville in order to recognize the presence of a teaching component, e.g. pediatric, the facility shall be arrayed with its appropriate peer group.

(4) Psychiatric hospitals shall not be peer grouped, but shall be in a separate array of psychiatric hospitals only.

(5) Rehabilitation hospitals and acute care hospitals providing only rehabilitation services shall not be peer grouped, arrayed, or subject to the operating cost upper limits.

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

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

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

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

and up.

(d) Psychiatric hospitals shall not be peer-grouped but shall have a separate array of psychiatric hospitals only.

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

Section 9. Minimum Occupancy Factors. Allowable Medicaid capital costs shall be reduced if the following minimum occupancy factors are not met:

(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; and

(2) A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds.

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

Section 10. Reduced Depreciation Allowance. Reduced depreciation allowance policies shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding major movable equipment shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

(2) The use of a reduced depreciation allowance is not applicable with regard to psychiatric hospitals.

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

Section 11. Upper Limits and Payment Principles for Services Provided On or After November 29, 1993. The following upper limits and payment principles shall apply to all hospitals. Additional limitations for disproportionate share hospitals are shown in Section 12 of this administrative regulation.

(1) For acute care hospitals with 101 beds and up, an upper limit shall be established on all costs, excluding Medicaid capital cost and professional component cost, at the weighted median per diem cost for hospitals in each peer group.

(2) For acute care hospitals with 100 beds or less, the upper limit on all costs, excluding Medicaid capital cost and professional component cost, shall be established at 110 percent of the weighted median per diem for hospitals in the peer groups.

(3) The following policies shall be used in regard to psychiatric hospitals:

(a) An upper limit shall be established on all costs, excluding Medicaid capital cost and professional component cost, at the weighted median per diem cost for hospitals in the array.

(b) A psychiatric hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year-end settlement to actual cost.

(c) The projected cost may be adjusted for usual cost of living increases using the DRI index.

(4) After the arrays and upper limits have been established, they shall not be altered due to revisions or corrections of data. The arrays or upper limits may be changed as a result of changes of agency policy.

(5) Professional component costs shall be trended and indexed

separately in the same manner as operating costs, except an upper limit shall not be established.

(6) Provider taxes shall be considered an allowable cost with that portion attributable to Medicaid utilization included in the per diem rates.

(7) The following controls shall be applied to the per diem rate increases:

(a) Allowable rate growth from the prior rate year to the new rate year shall be limited to not more than one and one-half (1 1/2) times the DRI inflation amount for the same time period.

(b) Limits shall be applied to the capital and operating cost per diem components only.

(c) Rate growth beyond the allowable amounts shall be considered unallowable for rate setting purposes.

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(8) For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay, the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

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

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

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

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

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

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

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

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

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

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

Section 12. Disproportionate Share Hospitals. The following upper limits and payment principles shall apply to disproportionate share hospitals:

(1) Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, or hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for that hospital's peer grouping. In addition to the per diem amount computed in this manner, the hospitals shall be paid, as appropriate additional amounts for services to children under age six (6) as shown in subsection (6) of this section.

(2) State teaching hospitals owned or operated by the University of Kentucky or the University of Louisville shall have an upper limit set at 126 percent of the weighted median per diem cost for hospitals of 401 beds or more. Designated major affiliated pediatric teaching hospitals shall have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group.

(a) The pediatric teaching hospitals shall also be paid, in addition to the facilities' allowable inpatient operating per diem, an amount which is equal to two (2) percent of the per diem for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility.

(b) Hospitals shall be paid additional amounts for services to children under age six (6), as shown in subsection (6) of this section.

(3) Psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array.

(4) All other disproportionate share acute care hospitals shall have their upper limit set at the weighted median per diem cost for hospitals of similar size bed groupings. Hospitals shall be paid, as appropriate, additional amounts for services to children under age six (6), as described in subsection (6) of this section.

(5) The disproportionate share hospital payments for the period beginning February 20, 1995 shall be made as follows:

(a) The disproportionate share hospital payments for Type I and Type II hospitals shall include a volume adjustment. The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate. Total disproportionate share volume adjustment payments to Type I and Type II hospitals for indigent care services provided during the 1996 fiscal year shall not exceed \$86,500,000; all hospitals' volume adjustment amounts shall be adjusted proportionately, if payments will cause the limit to be exceeded. The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

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

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

of Medicaid occupancy above one (1) standard deviation.

(6) Medically necessary hospital inpatient services provided by all in-state disproportionate share hospitals to children under the age of six (6) with exceptionally high costs or long lengths of stay, after thirty (30) days from the date of admission or the mother's discharge, the payment rate shall be set at 110 percent of the per diem payment rate. These payments apply without regard to length of stay or number of admissions of the child.

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

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

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

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

(9) Disproportionate share hospitals.

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

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

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

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

5. Effective with regard to services provided on or after July 1,

1990, Hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall be up to but not in excess of 140 percent of the Medicaid per diem rate.

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

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

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

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

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

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

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

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

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

2. The disproportionate share hospital payments for the period beginning July 1, 1994 and thereafter shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate (except that total disproportionate share payments for indigent care services provided during the 1995 fiscal year shall not exceed \$81,000,000; if payments will cause the limits to be exceeded, all hospitals' earned amounts shall be adjusted proportionately). The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

3. Effective with regard to medically necessary hospital inpatient

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

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

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

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

Section 13. In-state Nondisproportionate Share Hospitals. In-state nondisproportionate share hospitals shall be compensated in the manner described in Section 12(5)(a) of this administrative regulation for services provided by the hospital to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to 100 percent of the federal poverty level, except for nonemergency care rendered through a hospital emergency room, in accordance with KRS 205.640.

Section 14. Payments to Participating Out-of-state Hospitals. (1) Participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered to eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Payment limits shall be set for participating out-of-state hospitals at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days after the date of admission in accordance with the following:

(a) For infants under the age of one (1) in any hospital; and
(b) For children under the age of six (6) in disproportionate share hospitals.

(3) Professional costs for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

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

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission,

participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

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

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

Section 15. Appeal Rights. As specified in the Medicaid Reimbursement Manual for Hospital Inpatient Hospital Services, negative actions may be appealed in accordance with 907 KAR 1:671, Sections 12, 13, and 14.

MASTEN CHILDERS II, Commissioner and Secretary
 APPROVED BY AGENCY: September 27, 1995
 FILED WITH LRC: September 28, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All participating hospitals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Considered budget neutral.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(7) Assessment of alternative methods; reasons why alternatives

were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will provide for greater access to health care services.

(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: Would lead to reduced access to health care services.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY

907 KAR 1:140E

This emergency administrative regulation is being amended to revise alternative intermediate services for individuals with mental retardation or developmental disabilities (AIS-MR-DD) to show program changes effecting continuation of services to be implemented on October 1, 1995. This action must be taken on an emergency basis to ensure equal access to AIS-MR-DD services. It will also protect clients through due process procedures that continue to provide for continued payment for services during the appeals process. Enactment of this administrative regulation on an emergency basis would serve to protect the public health, safety or welfare of Medicaid beneficiaries. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

907 KAR 1:140E. Alternative intermediate [home and community-based] services for individuals with mental retardation or developmental disabilities (AIS-MR-DD). [the mentally retarded (AIS/MR).]

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subpart G, 42 USC 1396a, b, d, n

EFFECTIVE: September 27, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act [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 Medicaid coverage provisions applicable to home and community based services provided to individuals with mental retardation [the mentally retarded] as an alternative to intermediate care facility services for the mentally retarded.

Section 1. General Medicaid Coverage Provisions. The home and community based services described in this administrative regulation shall be provided only to those individuals eligible for Medicaid who meet intermediate care for the mentally retarded patient status criteria as set forth in 907 KAR 1:022. These services are designed to prevent or reduce institutionalization at the intermediate care level and shall therefore be provided only to individuals in community residence living situations. These services are termed alternative intermediate services for individuals with mental retardation or developmental disabilities (AIS-MR-DD). [the mentally retarded (AIS/MR).]

Section 2. Material Incorporated by Reference. The Alternative Intermediate Services for Individuals with Mental Retardation Policies and Procedures Manual (AIS-MR-DD Manual) shall be on file in the Commissioner's Office, Department for Medicaid Services, Third Floor East, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky, 40601 and is available for review during the normal business week, Monday through Friday, from 8 a.m. through 4:30 p.m. Each participating provider shall be provided one (1) copy of the manual. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 3. [2-] Provider Participation. (1) Any qualified provider may provide AIS-MR-DD [AIS/MR] services, upon application to the cabinet for a provider participation agreement accompanied by data sufficient in the opinion of the cabinet to show that the provider is qualified [under applicable law] to provide the services pursuant to the AIS-MR-DD manual incorporated by reference in Section 2 of this administrative regulation. [and has the capability to do so.]

(2) Providers certified by the cabinet shall be considered qualified to enter into the appropriate AIS-MR-DD [AIS/MR] provider participation agreement. Certification shall be determined by a surveying agency as [the Division of Licensing and Regulation, Office of the Inspector General, or other agency] designated by the Department for Medicaid Services in accordance with the qualifications in Section 3 of this administrative regulation. For the purposes of this administrative regulation, a survey agency means an agent designated by the cabinet to survey and certify facilities to provide AIS-MR-DD services to eligible recipients.

(3) Participating providers shall be required to provide, or arrange for the provision of, services appropriate to their certification de-

scribed in this administrative regulation.

Section 4. Certified [3-] Providers [Certification]. (1) Providers shall be certified to provide Medicaid services after the completion of a survey by the survey agency if the provider has been found to be in substantial compliance with the provider qualification requirements shown in the AIS-MR-DD Manual, herein incorporated by reference, as follows:

- (a) Case management;
- (b) In-home training;
- (c) Homemaker and home health aide;
- (d) Personal care;
- (e) Residential care;
- (f) Habilitation;
- (g) Day habilitation;
- (h) Respite care; and

(i) Multiservice providers, [after survey by the certification agency if the provider has been found to be in major compliance with the provider qualification requirements shown in the AIS/MR provider qualifications manual, dated November 1, 1991, herein incorporated by reference.]

(2) Providers requesting certification under this administrative regulation shall be considered certified through the date of their first survey to provide any services which were provided by that agency, [during the period from September 1, 1991 through the effective date of this administrative regulation] if those services were provided by or through contract with a participating provider. [The AIS/MR provider qualifications manual shall be on file in the Commissioner's Office, Department for Medicaid Services, Third Floor East, CHR Building, 275 East Main Street, Frankfort, Kentucky 40601 and will be available for review on normal working days (Monday through Friday) from 8 a.m. through 4:30 p.m. Copies may be obtained from that office upon payment of an appropriate fee which approximates cost.]

Section 5. Medicaid [4-] Covered Services. The following services shall be covered as AIS-MR-DD [AIS/MR] services with the exception of room and board:

(1) Residential care services to include provision of training, homemaker and home health aide support, and personal care. [Room and board shall be excluded.]

(a) Client [2-] training [2-] including [which includes] services designed to facilitate the acquisition of communication, sensory-motor, independent living, and social skills.

(b) Homemaker and home health aide support including [which includes] the provision of laundry services, meal planning and preparation, shopping and light housekeeping.

(c) [2-] Personal care [2-] including [which includes] services to assist and train in ambulation, grooming, feeding, and other related skills. [etc.]

(2) Case management services, including [which includes] the following:

- (a) Provision of intake;
- (b) Evaluation or assessment;
- (c) Access to and assuring freedom of choice of AIS-MR-DD providers [of AIS/MR];
- (d) Plan-of-care development and coordination;
- (e) Monitoring and support;
- (f) Operation of the core residence;
- (g) Assuring the availability of needed waiver services;
- (h) Meeting with and providing information to clients, parents or legal representatives;
- (i) Establishing and overseeing a human rights committee for review of overall procedures and individual behavioral plans; and
- (j) Acting on behalf of the client to assist [him] in gaining access to and receiving services from qualified AIS-MR-DD [AIS/MR] service providers;
- (k) Providing assistance to [in addition to the above, the case

management provider shall assist] the client, his family or legal representatives in accessing other services, as needed;

(l) [The case management provider shall be responsible for] Monitoring the health, safety and welfare of the client, including assuring that [2-] each core residence stay shall be limited to no more than ninety (90) days per client [patient].

(3) [2-] In-home training [2-] including [which includes] services designed to facilitate the acquisition, retention and improvement of language and communication, sensory-motor, social and self-help skills.

(4) [2-] Homemaker and home health aide support [2-] including [which includes] services to clients in their [own family] homes including the provision of laundry services, meal planning and preparation, shopping and house cleaning.

(5) [2-] Personal care [2-] including [which includes] services to assist and train in ambulation, dressing, grooming, eating, toileting, and other related skills. [etc.]

(6) Habilitation services including [which includes] behavior management services, psychological services, minor home physical adaptations [(including in home and alternate living units other than group homes)], medical services, occupational therapy, physical therapy, speech therapy, expressive therapies and leisure and recreation therapy. Services required to be provided by other agencies under the Rehabilitation Act of 1973, PL 93-112, as amended and the Individuals with Disabilities Act amendments of 1991, PL 102-119, as amended shall not be covered by the Medicaid Program. [Services shall be available to both adults and children if not required to be provided by the local schools and if directed at the resolution of problems not associated with mental illness.]

(7) Day habilitation services shall be provided for:

(a) A minimum of four (4) hours per day, five (5) days per week, twelve (12) months per year, in nonresidential noninpatient settings.

(b) Services shall be age appropriate.

1. Adult means an individual [not less than] eighteen (18) years of age or older.

2. For children, day habilitation services shall be covered only during the summer months when school is not in session.

(c) Day habilitation services may include supported employment and prevocational training for eligible persons, i.e., those participating individuals who have been deinstitutionalized.

(8) Respite care including [which includes] short-term care and supervision of the AIS-MR-DD [AIS/MR] client provided for the temporary relief of the family or staff, or for the safety or relief of the client. Coverage shall be limited to a maximum of sixty (60) days per calendar year for clients (excluding those residing in group homes or staff residences), with no more than thirty (30) consecutive days of respite.

Section 6. Client [5- Patient] Status Determinations. The cabinet shall make client [patient] status determinations using the criteria specified under patient status determinations pursuant to [in] 907 KAR 1:022, Section 4.

Section 7. [6-] Authorization for Services [2- Hearing Rights]. (1) The cabinet shall authorize AIS-MR-DD [AIS/MR] services to:

(a) Insure that client [patient] status is met in accordance with Section 6 of this administrative regulation;

(b) AIS-MR-DD [that AIS/MR] services are adequate for the needs of the client; and

(c) AIS-MR-DD [that AIS/MR] services are financially feasible for the cabinet to provide (i.e., do not cost significantly more than would institutional services).

(2) A client found unsuitable due to failure to meet any of the specified reasons shall be denied AIS-MR-DD [AIS/MR] services.

(3) An individual, if eligible for AIS-MR-DD [AIS/MR] services, shall be given the choice of AIS/MR services or traditional intermediate care facility services for the mentally retarded.

Section 8. Due Process. Any denial of service, involuntary termination or reallocation of AIS-MR-DD placements may be appealed in the manner provided in [for by 907 KAR 1:075 or] 904 KAR 2:055 [as appropriate]. No decision to involuntarily terminate or to reallocate placement subject to appeal shall be final until the hearing officer issues a decision.

Section 9. [Z-] Auditing and Reporting. (1) All participating providers shall be required to maintain fiscal and service records and to provide reports determined necessary by the cabinet for the effective functioning and administration of the program.

(2) Providers shall be required to make available upon request all service and financial records to representatives or designees of:

- (a) The Cabinet for Human Resources;
- (b) The federal Department of Health and Human Services, Comptroller General and Health Care Financing Administration; [and]
- (c) The General Accounting Office; and
- (d) The Office of the Auditor of Public Accounts. [and their designees, for auditing and monitoring purposes.]

Section 10. [8-] The amendments to this administrative regulation shall apply to certification of providers [on November 1, 1991 and] with regard to services provided on or after October 1, 1995. [January 1, 1992.]

Section 11. 907 KAR 1:425, Incorporation by reference of this revised Alternative Intermediate Services/Mental Retardation Manual, is repealed.

MASTEN CHILDERS, II, Secretary

APPROVED BY AGENCY: September 22, 1995

FILED WITH LRC: September 27, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All potential recipients of the Medicaid Program for alternative intermediate services for individuals with mental retardation or developmental disabilities and the participating service providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

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

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: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: Budget neutral.

(b) Reporting and paperwork requirements: None

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

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

funds.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure medical services are more widely available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Could negatively affect the provisions of care under Medicaid.

(c) If detrimental effect would result, explain detrimental effect: Necessary services might not be rendered.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY
AND THE REVIEWING SUBCOMMITTEE

DEPARTMENT OF MILITARY AFFAIRS
Kentucky Emergency Response Commission
(As Amended)

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

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050
STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850

NECESSITY AND FUNCTION: This administrative regulation
establishes criteria and procedures to be met by local emergency
planning committees requesting funds generated by KRS 39.817.

**Section 1. Definitions. "Tab Q-7 or commission approved
equivalent plan" means a plan describing the location and
characteristics of extremely hazardous substances which
includes the nine (9) required planning elements of PL 99-499,
Section 303 and KRS 39.840 and the Kentucky Emergency
Response Commission's planning requirements consisting of:**

**(1) A legible sketch of the facility which shows a directional
arrow, the location of extremely hazardous substances, and the
access road;**

**(2) The location of the response point and instructions for
responsibilities of the facility emergency response coordinator;**

**(3) Designation of the staging area and alternative staging
area(s);**

**(4) A listing of major suppliers of extremely hazardous
substances and their telephone numbers;**

**(5) A division of the vulnerable zone into four (4) quadrants,
listing the special facilities within each quadrant and the total
populations of each quadrant.**

Section 2. ~~[-]~~ To be eligible for financial assistance, local emer-
gency planning committees which have extremely hazardous
substances as listed in 106 KAR 1:081, Section 6, in excess of the
threshold planning quantity present in their community shall meet all
the following criteria during the preceding calendar year (January 1
through December 31):

(1) The local emergency planning committee shall meet all
requirements set forth in KRS 39.840.

(2) The local emergency planning committee shall have an
emergency response plan pursuant to KRS 39.840(1)(a), (e), (f) and
39.860 that has been approved by the Kentucky Emergency Re-
sponse Commission.

(a) The local emergency planning committee's emergency
response plan shall contain an approved Tab Q-7 or commission-
approved equivalent listed in Section 6 of 106 KAR 1:081 for each
facility in the planning district that has an extremely hazardous
substance listed in Section 6 of 106 KAR 1:081 in excess of the
threshold planning quantity.

(b) The local emergency planning committee shall submit new
Tab Q-7 or commission-approved equivalent plans to the state
disaster and emergency services area coordinator within sixty (60)
days of notification that the facility has an extremely hazardous
substance in excess of the threshold planning quantity.

(c) After new Tab Q-7 or commission-approved equivalent plans
are submitted, no later than April 1 each year, the local emergency
planning committee shall review the Tab Q-7 plans and send
certification to the state disaster and emergency services area
coordinator stating that there were no changes and therefore the plan
is correct as is; or the plan has been revised and the revisions are

included with the certification.

(d) The state disaster and emergency services area coordinator
shall review new Tab Q-7 or commission-approved equivalent plans
for completeness, note any recommendations and forward them to the
Chairman of the Kentucky Emergency Response Commission, or
designee, within thirty (30) days of receipt from the local emergency
planning committee.

(e) The state disaster and emergency services area coordinator
shall review Tab Q-7 or commission-approved equivalent revisions
and certifications received from the local emergency planning
committee for completeness, note any recommendations and forward
them to the Chairman of the Kentucky Emergency Response
Commission, or designee, no later than May 1 each year.

(3) The local emergency planning committee shall meet at least
twice during each calendar year (January 1 through December 31)
~~[semiannually]~~ to conduct its business and a quorum shall be
required.

(4) No later than December 1 each year, the local emergency
planning committee shall submit an updated membership list to the
Kentucky Emergency Response Commission.

(5) In accordance with KRS Chapter 424 (Legal Notice), the local
emergency planning committee shall ~~[annually]~~ publish during each
calendar year (January 1 through December 31) public information on
committee activities entitled "Public (Legal) Notice Advertisement" on
form DES/SARA-324 as set out in Section 7 of this administrative
regulation.

Section 3. ~~[-]~~ To be eligible for financial assistance, local
emergency planning committees which do not have any extremely
hazardous substances as listed in 106 KAR 1:081, Section 6, in
excess of the threshold planning quantity present in their community
shall meet the following criteria during the preceding calendar year
(January 1 through December 31):

(1) The local emergency planning committee shall meet criteria
set forth in KRS 39.840 (1)(b), (c), (d), (2), (4), (5) and Section 1(4)
and (5) of this administrative regulation.

(2) The local emergency planning committee shall meet at least
once during each calendar year (January 1 through December 31)
~~[annually]~~ to conduct its business and a quorum shall be required.

Section 4. ~~[-]~~ Local Emergency Planning Committee Procedures.

(1) If a local emergency planning committee requests financial
assistance, it shall use Grant Request Form DES/SARA-303 as set
out in Section 7 of this administrative regulation and shall include a
detailed budget identifying how the requested funds are to be spent.

(2) The grant request form shall be submitted to the state disaster
and emergency services area coordinator no earlier than January 1
and no later than May 1.

(3) The state disaster and emergency services area coordinator
shall review the grant request form for completeness and confor-
mance to statutes and administrative regulations, note any recom-
mendations and forward it to the Chairman of the Kentucky Emergen-
cy Response Commission or designee, no later than June 1.

(4) The Chairman of the Kentucky Emergency Response
Commission, or designee, shall review the grant request form for
completeness and conformance to statutes and administrative
regulations, note any recommendations and forward it to the Grant
Review Committee no later than July 1.

(5) The Grant Review Committee, with a quorum present, shall
review all grant requests and forward their recommendations no later
than August 15 to the Kentucky Emergency Response Commission
for final approval.

(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.

(7) The state disaster and emergency services area coordinator, the Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

Section 5. [4-] Requests for Modifications. (1) A modification of a grant award is required if there is a change in the grant request or if a local emergency planning committee is unable to expend the funds for the purpose for which the grant was awarded. A request for modification shall be submitted by the LEPC for approval by the commission. Unexpended monies shall be returned to the Kentucky Emergency Response Commission fee account fund.

(2) Requests for modifications of grant awards shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation and, except for due dates, shall be processed in accordance with Sections 3 and 6 of this administrative regulation.

(3) Modifications may be submitted throughout the grant period.

Section 6. [5-] Supplemental Grant Awards. (1) In the event supplemental money is available, the Kentucky Emergency Response Commission shall determine the date of the supplemental allocation award and inform the local emergency planning committees of that date.

(2) Requests for supplemental money shall be submitted on Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation and, except for due dates, shall be processed in accordance with this section and Sections 3 and 6 of this administrative regulation.

(3) If a local emergency planning committee requests supplemental money the schedule of due dates is:

(a) Thirty (30) days from notification by the Kentucky Emergency Response Commission of the availability of supplemental money, the local emergency planning committee shall submit the supplemental grant request to the state disaster and emergency services area coordinator.

(b) Thirty (30) days from receipt of the supplemental grant request, the state disaster and emergency services area coordinator shall review the supplemental grant request in accordance with Sections 3 and 6 of this administrative regulation and forward it to the Chairman of the Kentucky Emergency Response Commission, or designee.

(c) Thirty (30) days from receipt of the supplemental grant request, the Chairman of the Kentucky Emergency Response Commission, or designee, shall review the supplemental grant request in accordance with Sections 3 and 6 of this administrative regulation and forward it to the Grant Review Committee.

(d) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Sections 3 and 6 of this administrative regulation and forward their recommendations to the Kentucky Emergency Response Commission.

(e) Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the Kentucky Emergency Response Commission shall make the supplemental grant award.

Section 7. [6-] Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be deposited in a separate "(Name of County) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the Kentucky Emergency Response Commission

and the state auditor of public accounts.

(2) The bylaws of each local emergency planning committee shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on DES/Sara-303 and shall be submitted simultaneously with the grant request.

(3) The local emergency planning committee shall provide documentation of expenditures for the preceding year on each grant request submitted except for the initial grant request.

(4) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation.

(5) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

Section 8. [7-] Form DES/SARA-324 and grant request form DES/SARA-303 are set out in this section.

PUBLIC (LEGAL) NOTICE ADVERTISEMENT COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986 (PL 99-499), the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of Kentucky Revised Statutes. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), Chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820 and KRS 61.825. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by SARA, is (emergency number adopted by county planning committee).

KENTUCKY EMERGENCY RESPONSE COMMISSION
FEE ACCOUNT FUND
Grant Application for Grant Period 09/01/9__ to 08/31/9__

DUE DATES

LEPCs to ACs 05/01

Received by AC _____ Received by State _____

ACs to State 06/01

Received by AC _____ Received by State _____

Final Award 09/15 Initial & Date _____ Initial & Date _____

AUTHORIZED APPLICANT (INFORMATION) Emergency Planning Committee

County Name _____ County Code-3 digit no. _____

_____ Enter total number of Tab Q-7's with Extremely Hazardous

ADMINISTRATIVE REGISTER - 900

Substances in your county. This is the total number of facilities with extremely hazardous substances in your county.

DATE _____ GRANT INFORMATION

Grant Amount Requested \$ _____

Circle Type of Application: LEPC New Revised
State Agency New Revised

GRANT RECIPIENT

Checks shall be made payable to and mailed to the AUTHORIZED APPLICANT. The AUTHORIZED APPLICANT is the county emergency planning committee which is authorized to apply for and manage the grant. The AUTHORIZED APPLICANT shall provide the name _____ and phone number _____ of the designated contact person. The AUTHORIZED APPLICANT shall provide the name _____ and address _____ of the bank where the check shall be deposited.

Emergency Planning Committee

County Name _____ County Code-3 digit number _____

Street Address _____

City, Zip _____

LEPCs shall submit grant request form DES/SARA-303 to their state disaster and emergency services area coordinator. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

State agencies shall submit grant request form DES/SARA-303 to the Chairman, or designee, of the Kentucky Emergency Response Commission. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

CERTIFICATION

I, the undersigned, certify to the Kentucky Emergency Response Commission that all the information is true and accurate. I further represent that the money received under this grant program will be used for the administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-know program, known as SARA Title III, within the guidelines mandated by PL 99-499/Title III, KRS Chapter 39.800 to 39.990 and subsequent administrative regulations.

Name, Title and Date _____

DES/SARA-303

Grant Application for Grant Period 09/01/9__ to 08/31/9__

ATTACHMENTS

Detailed budget sheet for each budget category you request.
Documentation for preceding year's award.
Copy of published DES/SARA-324
Bylaws.

INELIGIBLE ITEMS

Emergency response equipment.
Reimbursement for emergency response and/or cleanup of a release.

BUDGET CATEGORIES

GRANT
REQUEST

GRANT
AWARD

Right-to-know responsibilities-includes legal notice
DES/SARA-324

Data Management-includes receiving and maintaining data under 302(c)/KRS 39.845; 304/KRS 39.840(b), 311/312/KRS 39.840(c)

Telephone-includes 24-hour warning point for releases and cost of telephone for LEPC business

Services-includes contracts* to support KRS 39.800 to KRS 39.990

Office Supplies-includes postage, printing, copying and paper

File cabinets, desks, chairs

Commission-approved training

Commission-approved travel

TOTAL GRANT REQUEST
LESS CARRYOVER
MONIES
ADJUSTED GRANT
AWARD

*Contracts for personal services and equipment shall be in conformance with state laws and administrative regulations.
DES/SARA-303

MAJOR GENERAL ROBERT L. DEZARN, Adjutant General, Chairman

APPROVED BY AGENCY: August 15, 1995

FILED WITH LRC: August 15, 1995 at 11 a.m.

DEPARTMENT OF MILITARY AFFAIRS Kentucky Emergency Response Commission (As Amended)

106 KAR 1:131. Kentucky emergency response commission civil penalty assessment and hearings procedure.

RELATES TO: KRS 39.800 to 39.990

STATUTORY AUTHORITY: KRS 39.990, 1994 Ky. Acts ch. 382, Sec. 19

NECESSITY AND FUNCTION: This administrative regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39.990.

Section 1. Construction. These administrative regulations shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the Kentucky Emergency Response Commission. These administrative regulations are not intended as a comprehensive

sive set of hearing administrative regulations and shall in no way be construed to impede or constrict the power of a hearing officer to administer the law, or administrative regulations, or to govern the conduct of the hearing officer's docket or the procedural course of a particular administrative action. The Kentucky Rules of Civil Procedure and the case law interpreting those rules may be used as analogous authority to interpret these administrative regulations.

Section 2. General Provisions. [(4)] The commission shall commence an administrative action to impose a civil penalty under KRS 39.990(3) against a person [facility] when the commission has notice of the existence of a violation of any provision of KRS 39.800 to 39.990. The commission chairman (or [his] designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time and place of the violation, if applicable, together with a summary of the factual, legal and other grounds upon which the notice of violation is based, and [for the assessment hearing,] the specific provisions of KRS 39.800 to 39.905 or the commission's administrative regulations that were allegedly violated, and shall advise the alleged violator that he may be represented by an attorney at the hearing.

(2) The hearing shall be held in Frankfort, Kentucky.

(3) All documents filed by any party shall be served by mail, upon all other parties. Mere recitation of statutory or regulatory standards is not a sufficient summary of the grounds for the commission's action. The commission chairman (or designee) may attempt to informally resolve the violation in accordance with Section 3 of this administrative regulation. Where, after ninety (90) days from the issuance of the notice of violation the alleged violation is unresolved, the commission chairman (or designee) shall issue a notice of administrative hearing, following the requirements of KRS 13B.050.

[Section 2. Assessment Hearing. When a notice of violation has been issued, an administrative hearing shall be held to determine if a violation of the provisions of KRS 39.800 to 39.905 or the commission's administrative regulations have been committed and to determine the amount of the civil fine to be imposed.]

Section 3. Informal Proceedings. After an administrative action commences, the commission may seek informal resolution of the dispute with a party under the following procedures:

(1) The commission shall give reasonable notice to all affected persons of the commission's notice of violation.

(2) After giving notice, the commission shall give affected persons or parties an opportunity, at a mutually convenient time and place, to present to an authorized commission representative evidence in opposition to the commission action or determination, or to give a statement challenging the grounds upon which the commission has chosen to justify its action or determination.

(3) The authorized representative of the commission shall give the affected person's evidence and objections due consideration, and notify all affected persons in writing within fourteen (14) days of the receipt of the evidence or objections of the commission's decision. [Designation of a Hearing Officer. The full commission shall designate an independent hearing officer who shall be a person trained in the law who will serve for the duration of the hearing. The hearing officer shall not be staff to or be a member of the Kentucky Emergency Response Commission.]

Section 4. Parties. The parties to the proceeding shall be the commission chairman (or [his] designee) and the alleged violator who shall be designated respondent. A person may be permitted to intervene in any action by filing a petition for intervention in accordance with KRS 13B.060. [and in any action under this section, any person may intervene when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's

ability to protect that interest unless the hearing officer determines the person's interest is adequately represented by existing parties in the action.]

Section 5. Assignment to Hearing Officer; Duties and Authority.

(1) Within ten (10) days of the filing of the notice of violation, the commission shall designate a hearing officer for formal administrative action in any manner consistent with KRS 13B.030. If the commission elects to designate a hearing officer from the Division of Administrative Hearings in the Office of the Attorney General under KRS 13B.030, it shall make that request in writing to the division within ten (10) days of the filing of the notice of violation.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to the administrative regulations governing the conduct of the Division of Administrative Hearings of the Office of the Attorney General.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on and relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS Chapter 13B or these administrative regulations, including, for example [but not limited to], the authority to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas for witnesses and production of documents or things;

(c) Regulate discovery;

(d) Rule on procedural requests;

(e) Hold prehearing conferences;

(f) Regulate the course of, and maintain order in the administrative hearing;

(g) Rule on evidentiary matters and admit in or exclude evidence from the record;

(h) Examine witnesses;

(i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;

(j) Make proposed findings of fact, conclusions of law and recommended orders for the agency head; and

(k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

Section 6. [5-] Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing and include the reason for the request. The request shall be submitted to the commission chairman (or [his] designee) at least ten (10) days prior to the hearing date.

(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or [his] designee) at least five (5) days prior to the scheduled hearing.

(3) The hearing officer shall rule on all requests for a continuance. In the hearing officer's absence, the commission chairman (or [his] designee) shall rule on such requests. The commission chairman (or [his] designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.

Section 7. Conflict of Interest; Recusal. (1) If at any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall recuse and enter a written order withdrawing from the administrative action.

(2) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts which demonstrate one (1) or more of the grounds for recusal set forth in KRS

13B.040(2)(b).

(3) Within ten (10) days of recusal of a hearing officer, the commission shall request or assign another hearing officer by written order. ~~[6- Conduct of Hearing. (1) The designated hearing officer shall conduct the hearing at the date, time and place set out in the notice of violation.~~

~~(2) The hearing officer shall be empowered to rule on all questions of law and procedure as well as the appropriate weight to be given to specific testimony or evidence.~~

~~(3) The formal rules of civil procedure shall apply.~~

~~(4) The hearing officer shall require an orderly hearing with proper decorum and shall be empowered to issue orders compelling discovery, the attendance of witnesses and the production of documents for the purposes of conducting the hearing.~~

~~(5) The proceedings and evidence shall be recorded.]~~

Section 8. Ex Parte Contact Prohibited. (1) Unless otherwise allowed by KRS 13B.100, there shall be no administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(2) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(3) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(4) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including, but not limited to deeming the person to have defaulted, striking all or part of that person's pleadings, claims, or defenses, denying any pending motions by the party, issuing a show cause order requiring the person to show why the hearing officer should not sanction the person, or taking such other actions as are appropriate.

~~[Section 7. Exemptions. Any party seeking an exemption or relief from the payment of a fine shall have the burden of persuasion to establish that he qualifies for the exemption. Determination concerning exemptions shall be subject to Section 9 of this administrative regulation.]~~

Section 9. Motion for Summary Disposition. A hearing officer may grant a motion for a summary disposition and recommend the agency head rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

Section 10. Filing of Papers. (1) All papers after the petition required to be served upon a party shall be filed with the commission either before service or within a reasonable time thereafter.

(2) Pleadings and other papers shall be filed with the commission when they are received and endorsed by the commission. The commission shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Papers may be filed with the commission by telefacsimile machine at the telefacsimile telephone number listed for the commission on the notice of violation. Parties filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing such a paper mail the original paper to the commission. The filing date of a paper sent by facsimile shall be the date the commission receive the original, unless the original is received with five (5) business days of the facsimile, in which case the filing date shall be

the date the commission received the facsimile.

(4) All papers filed in an administrative action must be signed by the filing person. The signature of the filing person or his authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose. If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper and take any action allowed as a consequence of such failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the agency head bar that attorney from appearing in future administrative actions before the commission.

Section 11. Venue. Administrative hearings shall be conducted at a site designated by the hearing officer. In determining venue, the hearing officer shall consider the requirements of law, the convenience of the parties, the witnesses and the evidence.

Section 12. Default. (1) If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend that the commission chairman (or designee) enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the entry of a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his right to a formal administrative hearing and may immediately recommend the commission chairman (or designee) enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulted party.

(3) Upon the failure of a party to timely comply with a hearing officer's order, the hearing officer may recommend the commission chairman (or designee) grant any relief to which the opposing party is entitled.

(4) A hearing officer may, before the time for filing exceptions has run, set aside a recommendation by default under this section for good cause shown.

Section 13. Burden of Proof. (1) The commission shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the commission's action.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

~~[Section 8. Burden of Proof. The commission chairman (or his designee) shall have the burden of persuasion in establishing a prima facie case. When a prima facie case has been presented to the satisfaction of the hearing officer, the burden of persuasion shall shift to the respondent who shall have the burden of persuasion to rebut the prima facie case.]~~

Section 14. [9-] Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law and issue a recommended order for review and approval by the full commission with service on all parties. Any party

may take exception in writing within fifteen (15) [seven (7)] days of mailing [receipt] of the hearing officer's recommended order. Thereafter, the commission chairman (or designee), shall, as directed by the commission, [may elect to] approve the findings of fact, conclusions of law and recommended order or [it] may modify the findings of fact, conclusions of law and recommended order. If no exceptions are filed and the commission takes no action on the hearing officer's findings of fact and conclusions of law within thirty (30) days, the order of the hearing officer shall be final. [subject to the requirements of KRS Chapter 39 provided that final action by the commission shall be supported by findings of fact from the record and shall be so designated by identifying this action as final action.]

Section 15. (1) [40.] Service of the notice of violation, notice of administrative hearing, and the hearing officer's recommended order shall be made by certified mail to the alleged violator at the [notice of violation to the] address shown on the annual inventory reporting forms or facility plan required to be filed by KRS Chapter 39. If no facility plan or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission by any party shall be served by mail upon all other parties.

MAJOR GENERAL ROBERT L. DEZARN, Adjutant General,
Chairman

APPROVED BY AGENCY: August 15, 1995

FILED WITH LRC: August 15, 1995 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Marriage
and Family Therapists
(As Amended)

201 KAR 32:010. Definitions.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320

NECESSITY AND FUNCTION: KRS 335.330 sets forth the requirements for certification as a marriage and family therapist. The board is required to review the applications of applicants for certification. In addition to other requirements, KRS 335.330 requires applicants to have experience under supervision. This administrative regulation establishes definitions necessary for the evaluation of experience under supervision.

Section 1. Definitions. The following terms relate to the evaluation of applications for certification:

(1) [(3)] "Approved supervisor" means an individual who [is one (1) of the following]:

(a) [A person who] Holds a designation as an approved supervisor granted by the American Association for Marriage and Family Therapy;

(b) [A person who] Is certified as a marriage and family therapist in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of marriage and family therapy; or

(c) [A person who] Holds licensure or certification in another mental health profession whose education and experience demonstrate to the board a level of competence equivalent to that contained in paragraph (b) of this subsection. After July 15, 1999, a supervisor qualifying under this paragraph shall no longer be considered as an approved supervisor.

(2) [(4)] "Clinical supervision" means the process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing marriage and family services. Clinical supervision shall be equally distributed throughout the qualifying period.

(3) "Equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by the coursework in each of the basic core areas listed in Section 1 of 201 KAR 32:020.

(4) [(4)] "The practice of marriage and family therapy" means the identification and treatment of cognitive, affective, and behavioral symptoms of marital and family dysfunctions that [- Marriage and family therapy] involves the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(5) [(2)] "Two (2) years" experience in the practice of marriage and family therapy means a minimum of two (2) years of the practice of marriage and family therapy which includes 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor.

[Section 2. Clinical membership in the American Association for Marriage and Family Therapy shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification as set forth in KRS 335.330(3) and (4)(a) and (b).]

JOHN P. SOHAN, Board Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Marriage
and Family Therapists
(As Amended)

201 KAR 32:020. Equivalent course of study.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320, 335.330

NECESSITY AND FUNCTION: KRS 335.330(3) provides [states] that the board shall define a course of study equivalent to a master's degree in marriage and family therapy and promulgate the equivalency standard by administrative regulations. This administrative regulation defines [clarifies] the criteria for the equivalent course of study. [marriage and family therapy education and clinical training as approved by the United States Department of Education.]

Section 1. "An equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by the coursework in each of the basic core areas listed in Section 2 of this administrative regulation.

Section 2. The basic core areas which are necessary in order to qualify as an equivalent course of study, shall include the following:

(1) Marriage and family studies. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall be theoretical in nature and have a major focus of system theory orientation, and may include:

- (a) Systems theory;
- (b) Family development;
- (c) Blended families;
- (d) Cultural issues in families;
- (e) Family subsystems;
- (f) Major models of family systems theory; or
- (g) Gender issues in families.

(2) Marriage and family therapy. This area shall include a

minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall have a major focus on family systems theory and systemic therapeutic interventions. Courses shall relate to major theories of family systems change and therapeutic practices evolving from each theoretical model. Examples may include:

- (a) Structural communications family therapy;
- (b) Strategic object relations family therapy;
- (c) Behavioral family therapy;
- (d) Intergenerational family therapy;
- (e) Solution oriented family therapy;
- (f) Narrative family therapy; or
- (g) Systemic sex therapy.

(3) Human development. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area provide knowledge of individual human personality development in both normal and abnormal manifestations. Topic areas may include:

- (a) Human development;
- (b) Psychopathology;
- (c) Personality theory;
- (d) Human sexuality; or
- (e) Effects of gender and cultural issues on human development.

(4) Professional studies. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Professional ethics in marriage and family therapy;
- (b) Legal responsibilities of the therapist;
- (c) Professional socialization and the role of the professional organization;

- (d) Licensure or certification legislation; or
- (e) Independent practice issues.

(5) Research. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Statistics;
- (b) Research methods;
- (c) Quantitative methodology; or
- (d) Other courses designed to assist the student to understand and perform research.

(6) Practicum or internship. The practicum or internship shall include a minimum of one (1) year or 300 hours of supervised direct client contact with individuals, couples and families for family therapy.

(a) Applicants who did not complete a clinical practicum in graduate school may satisfy the practicum requirement with their first 300 post masters' client contact hours.

(b) These hours shall not be counted toward the two (2) years of required post master's experience or the 200 hours of clinical supervision.

Section 3. A course used to fulfill one (1) of the requirements set forth in Section 2 of this administrative regulation may be used to fulfill only one (1) of the basic core area requirements.

Section 4. (1) Applicants who completed their qualifying graduate degree in a mental health field prior to 1985 may substitute conferences, workshops, seminars, or in-service training related to marriage and family therapy attended or presented as a substitute for college coursework required in Section 2 of this administrative regulation.

(2) Forty-five (45) contact hours of relevant content shall equal three (3) semester hours of credit.

(3) A list of equivalencies the applicant wishes to have considered shall be organized by core area as set forth in Section 2 of this administrative regulation.

(4) Appropriate documentation shall include:

- (a) Date;
- (b) Title;

- (c) Course description;
- (d) Sponsoring organization;
- (e) Presenter;
- (f) Number of contact hours attended or presented; and
- (g) Certificates of attendance.

Section 5. Other acceptable equivalencies may be considered as follows:

(1) One (1) graduate level course taught on a [relevant] subject relevant to marriage and family therapy after 1985 may be considered equivalent to three (3) semester hours of credit.

(2) Publication on a [relevant] subject relevant to marriage and family therapy dated after 1985 may be submitted as equivalencies as acceptable to the board. Credit shall be granted as follows:

(a) A chapter in a book is equivalent to three (3) semester hours of credit. An applicant~~[e]~~ who authors or edits a book may be given credit equivalent to six (6) semester hours of credit. An applicant~~[e]~~ shall submit a copy of the title page, table of contents and bibliography.

(b) Publication in a professional refereed journal is equivalent to three (3) semester hours of credit. An applicant~~[e]~~ shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 6. Clinical membership in the American Association for Marriage and Family Therapy shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification as set forth in KRS 335.330(3) and (4)(a) and (b).

JOHN P. SOHAN, Board Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification for Marriage
and Family Therapists
(As Amended)**

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 334.330, 335.320(7)

NECESSITY AND FUNCTION: This administrative regulation establishes the initial fee for certification that KRS 335.330 authorizes the board to establish by administrative regulation. [It is necessitated by KRS 335.330 and sets forth in detail all fees charged by the board.]

Section 1. Initial Certification Fee. (1) The initial certification fee for certification as a marriage and family therapist shall be \$200.

(2) If an ~~[the]~~ application for certification is denied, the board shall ~~[may]~~ refund \$150 of the initial certification fee.

JOHN P. SOHAN, Board Chairman

APPROVED BY AGENCY: April 20, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

ADMINISTRATIVE REGISTER - 905

JUSTICE CABINET Department of Corrections (As Amended)

501 KAR 2:020. Definitions.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.060, 532.100

NECESSITY AND FUNCTION: To provide adequate information and guidance on the housing of Class D felons in county jails.

Section 1. Definitions. (1) "Assessment [A] classification center (A/C center)", see CPP 17.3 incorporated by reference in 501 KAR 6:020.

(2) "Class D felon" means an inmate convicted of a Class D felony with an indeterminate sentence of five (5) years or less which is not a sexual offense enumerated in KRS 197.410(1) and who was sentenced after July 13, 1992.

(3) "Classification branch manager", see CPP 18.6.

(4) "Community center program manager", see CPP 25.6.

(5) "Educational good time", see CPP 15.3 and CPP 20.1.

(6) "Escape", see KRS 520.010.

(7) "Forfeited good time", see CPP 25.6.

(8) "Furlough", see CPP 25.4.

(9) "Jail", see KRS 441.005(1).

(10) "Meritorious good time", see CPP 25.6.

(11) "Minimum custody", see CPP 18.5.

(12) "Medium custody", see CPP 18.5.

(13) "Statutory good time", see CPP 25.6.

(14) "Waiver" means that a county is exempt under KRS 532.100 from housing any Class D felons.

(15) "First Incarceration Shock Treatment Program (FIST)" means the boot camp program operated at Roederer Correctional Complex.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 7, 1995 at 4 p.m.

JUSTICE CABINET Department of Corrections (As Amended)

501 KAR 2:040. Waivers.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This ~~proposed~~ administrative regulation is necessary to establish ~~provide~~ the process for counties to request waivers from the department for housing Class D felons in county jails.

Section 1. Request for Waivers; Effect of Waivers. (1) The waiver request shall be signed by ~~both~~ the county judge executive and jailer.

(2) The waiver shall remain in effect until the county notifies the department in writing to terminate the waiver.

Section 2. Controlled Intake. (1) Class D felons in ~~those~~ ~~these~~ counties with waivers shall be considered controlled intake inmates and ~~be~~ processed through the A/C center in accordance with CPP 17.3, incorporated by reference in 501 KAR 6:020. The department may also transfer a Class D felon directly from a county with a waiver to a county jail which houses Class D felons if ~~when~~ space is available.

(2)(a) A computer listing shall be maintained at ~~Upon transfer to~~

the A/C center on Class D felons convicted in counties granted waivers.

(b) Except as provided ~~set forth~~ in subsection (3) of this section, ~~as jail beds become available and within the funding limits approved by the legislature,~~ the community center program manager shall transfer a ~~the~~ felon to a county jail as jail beds become available. ~~[shall have their names placed on a waiting list for placement in another jail by the community center program manager.]~~

(3) An inmate for whom the department has received orders from the sentencing court directing that he serve his sentence in the county jail shall:

(a) Serve his sentence in the county jail; and

(b) Be processed as provided by 501 KAR 2:060. ~~[The only exceptions shall be inmates for whom the department has received orders from the sentencing court directing that the inmates [who entered into plea agreements with the courts in order to] serve their sentence in the county jail. These inmates shall serve their sentences in the county jail and [shall] be processed in accordance with [procedures outlined in] 501 KAR 2:060. [The department may also transfer a Class D felon directly from a county with a waiver to a county jail which houses Class D felons when space is available.]]~~

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 7, 1995 at 4 p.m.

JUSTICE CABINET Department of Corrections (As Amended)

501 KAR 2:050. Transfer requests.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This ~~proposed~~ administrative regulation is needed to establish ~~provide~~ the process for eligible counties to request transfer of Class D felons from county jails to the state prison system.

Section 1. Eligibility. Counties not requesting waivers shall be eligible to house qualified Class D felons ~~as funded by the legislature~~ unless the department through its minimum jail standards enforcement procedures outlined in KRS 441.075 orders a county jail to cease housing Class D felons.

~~Section 2. [Transfer to State Prison System Upon Reaching Funding Limit. When the number of Class D felons in county jails has exceeded the number of jail beds funded by the legislature, the Department of Corrections shall begin transferring Class D inmates to the state prison system. Class D inmates shall be transferred out of jails based on each jail's proportion of Class D inmates compared to the number of Class Ds statewide. Jailers shall be consulted as to which Class D inmates may be transferred to the state prison system.]~~

~~Section 3. [2.]~~ Transfer Requests. (1)(a) Counties not seeking waivers may request the department to have a Class D felon transferred to the state system if one (1) or more of the four (4) conditions enumerated in KRS 532.100 are present.

(b) The county jailer shall request the transfer on a "Request for Transfer" form ~~[incorporated herein by reference]~~.

(c) The form shall be submitted to the Division of Local Facilities, which ~~who~~ shall review the form and forward it with a recommendation to the commissioner.

(2) The commissioner or his designee shall approve or deny the request.

(a) If approved, a copy of the form shall be forwarded to the

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Classification Branch Manager [A/C center] so that an appropriate transfer can be arranged.

(b) If ~~denied~~ [the commissioner denies the request], a copy of the form shall be returned to the jailer who may [follow the] appeal as provided by [process cited in] KRS 532.100(5).

Section 3. Incorporation by Reference. (1) "Request for Transfer, 2/95" is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 7, 1995 at 4 p.m.

SCHOOL FACILITIES CONSTRUCTION COMMISSION (As Amended)

750 KAR 1:010. Commission procedures.

RELATES TO: KRS Chapter 157

STATUTORY AUTHORITY: KRS 157.617, 157.622

NECESSITY AND FUNCTION: The School Facilities Construction Commission was established for the purpose of assisting local school districts to meet the school construction needs of the state. The General Assembly has appropriated funds for administrative support and debt service to allow the commission to implement its program. This administrative regulation describes the procedures the School Facilities Construction Commission will utilize in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, and cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project. This amendment redistributes the maximum amount of fees authorized by the commission to be paid to financial advisors for services performed for commission and local school board bond issues, and corrects the name of the commission referenced in the administrative regulation to comply with statutory language contained in KRS 157.617.

Section 1. Definitions. (1) "Level repayment schedule" is one in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.

(2) "Maximum annual repayment amount" is the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.

(3) "Offer of assistance" is the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5).

(4) "Total interest" is the first gross interest payment of the debt service for the SFCC portion of the schedule.

(5) "Daily interest" is the total interest divided by the number of days in the first coupon.

Section 2. Eligibility. (1) The School Facilities Construction Commission shall use the statement of need[;] and available local revenue as certified by the State Board for Elementary and Secondary Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the State Board for

Elementary and Secondary Education.

(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during such funding period.

Section 3. [2-] Rate of Participation. The rate of participation of each "eligible district", as defined by KRS 157.615, shall be determined by dividing the unmet needs of such respective district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium. In the event there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales will be scheduled in the order in which the School Facilities Construction Commission receives requests for approval of bond sales. All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. [3-] Offer of Assistance. Upon certification of the rate of participation by the School Facilities Construction Commission, the Executive Director of the School Facilities Construction Commission shall notify each eligible district of its entitled rate of participation and the requirements to [that must] be met if it wishes to accept the offer of assistance. These requirements shall include the amount of local revenue to be expended as certified by the State Board for Elementary and Secondary Education, the priority order of facilities to be built as certified by the State Board for Elementary and Secondary Education, and the sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 5. [4-] Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the School Facilities Construction Commission of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and/or the amount it wishes to hold in its escrow account. A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension may be granted by the Executive Director of the School Facilities Construction Commission.

(2) Within ninety (90) days of the offer of assistance the local district shall provide the School Facilities Construction Commission with a copy of the project BG-1 form approved by the Department of Education[; an Architects Contract; Construction Managers Contract, if applicable; and a letter of approval from the Department of Education approving the financial plan for the projects to be completed. These contracts shall be negotiated by the local board of education; however, any fees in which the School Facilities Construction Commission participates shall not exceed the fee schedules listed in Section 6(2) of this administrative regulation].

(3) Within 120 days of the offer of assistance the local district shall provide the School Facilities Construction Commission with an executed deed, Title Opinion, and Certificate of Title Insurance for the project site. If the site acquisition process is in litigation, an extension may be granted by the School Facilities Construction Commission upon written request of the local board of education. Under no circumstances will the extension go beyond the biennium in which the offer was made.

Section 6. [5-] Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. [6-] Allowable Expenditures of Funds. [4-] All funds available from "available local revenue", as defined by KRS 157.615,

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shall be expended before funds generated by bond sales authorized by the SFCC are expended. All funds available for a project shall be expended for the purpose of major renovation and/or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities plan of the respective districts. Such cost may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment. The site acquisition cost shall be limited to the lesser of the actual cost of acquiring a site or the fair market value of the site as determined by qualified appraisal obtained by the School Facilities Construction Commission and charged to the project account. In no case shall School Facilities Construction Commission funds or funds from the restricted account be used to purchase a site greater than that required by state board administrative regulations for construction of the approved project. In no case shall School Facilities Construction Commission funds or funds from the restricted account be used to reimburse the local board of education for a site acquired before enactment of KRS 157.611. Construction costs may include the cost of fixed equipment and movable equipment, but may not include the cost of supplies as defined by "Kentucky School Financial Accounting System" Instruction Manual.

~~[(2) The fees of architects and engineers shall be limited to the following fee schedule if the School Facilities Construction Commission participates in the payment of such fees:~~

Cost of Construction	Basic Fee
Up to \$25,000	12.0%
\$25,000 to \$50,000	10.4%
\$50,000 to \$75,000	9.4%
\$75,000 to \$100,000	8.7%
\$100,000 and under \$200,000	8.0%
\$200,000 and under \$300,000	7.4%
\$300,000 and under \$400,000	7.1%
\$400,000 and under \$500,000	6.8%
\$500,000 and under \$600,000	6.5%
\$600,000 and under \$700,000	6.3%
\$700,000 and under \$800,000	6.2%
\$800,000 and under \$900,000	6.1%
\$900,000 and under \$1,000,000	5.9%
\$1,000,000 and under \$1,250,000	5.8%
\$1,250,000 and under \$1,500,000	5.7%
\$1,500,000 and under \$1,750,000	5.6%
\$1,750,000 and under \$2,000,000	5.5%
\$2,000,000 and under \$2,250,000	5.4%
\$2,250,000 and under \$2,500,000	5.3%
\$2,500,000 and under \$2,750,000	5.2%
\$2,750,000 and under \$3,000,000	5.1%
\$3,000,000 and over	5.0%
Repetitive Design Project	75% of Basic Fee
Renovation Project	125% of Basic Fee

Section 8. [7.] Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the School Facilities Construction Commission shall determine whether the local school district will issue the bonds or the SFCC will issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through the local fiscal court or municipal government. Such a request shall be submitted to the commission at the time the local school district accepts the offer of assistance.

(2) If the commission grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

(a) The local board of education shall obtain the services of a financial advisor;

(b) The contract with the financial advisor shall be submitted to the School Facilities Construction Commission for final approval after

signature by the local school district and the financial advisor;

(c) The local board of education shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet eligibility criteria provided by the School Facilities Construction Commission.

(3) In situations where the size of the bond issues is small (less than \$500,000) or there is no local participation in the repayment, the School Facilities Construction Commission may determine that it is in the best interests of the School Facilities Construction Commission and the local school board for the School Facilities Construction Commission to manage the bond sale procedures. In cases where this determination is made, the following shall apply:

(a) The bonds will be sold in the name of the School Facilities Construction Commission;

(b) The School Facilities Construction Commission shall obtain the services of a financial advisor;

(c) At the discretion of the School Facilities Construction Commission, multiple projects may be combined into single bond issues. These will generally be limited to small projects and projects where the respective construction bid dates are contemporaneous;

(d) The School Facilities Construction Commission shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet the eligibility criteria provided by the School Facilities Construction Commission.

(4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:

(a) The School Facilities Construction Commission's portion of the bond sale shall be limited to a twenty (20) year issue, with level repayment schedule. The maximum annual repayment amount[s] shall not exceed the offer of assistance from the School Facilities Construction Commission;

1. The debt service schedule shall always have twenty (20) [ten (10)] years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years; however, in such cases the amounts of the first and last payments combined shall not exceed the amount of one (1) annual payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall be the same as used by state government, beginning on July 1 and ending the following June 30. All schedules shall be prepared in such a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the State Board for Elementary and Secondary Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years;

(c) Interest collected and accrued on funds derived from the bond sale shall [will] be allocated [credited] to the debt service schedules of the school district and the School Facilities Construction Commission in the same proportions as its respective participation in the bond issue;

1. For allocation purposes, each month is calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC is calculated by multiplying the number of days times the "daily interest" as defined in Section 1 of this administrative regulation.

3. The number of days is calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of

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settlement.

4. For a typical six (6) month coupon, the number of days would be 180. For a longer coupon (i.e., seven (7) months) the divisor would be 210 days.

5. If local payments are involved in the bond issue, this same method shall be used to allocate the accrued interest available to the local district.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the commission's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority;

(e) A certificate of project completion shall be filed with the School Facilities Construction Commission by the local school district. The certification shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district;

(f) Fees paid to a financial advisor shall be in accordance with the following fee schedule. Fees exceeding this schedule shall be paid by the local board of education.

Maximum Fee Schedule Services and Expenses of Fiscal Agent

- \$11 per \$1,000 on the first \$1 million
- \$10 per \$1,000 on the second million
- \$4 per \$1,000 all over \$2 million

Fee is based upon the amount of bonds actually issued.

Fee to include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing.

Fee not to include title search or rating service.

Section 9. [8-] Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds [that is] sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the School Facilities Construction Commission to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. In the event there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to meet the eligibility criteria.

R.E. TARVIN, Secretary

APPROVED BY AGENCY: August 14, 1995

FILED WITH LRC: August 15, 1995 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:030. Employer contributions.

RELATES TO: KRS 341.260, 341.300

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets the due dates upon which employer contributions shall be [are] payable to the division.

Section 1. The initial due date for payment of contributions by an employing unit shall be [is] the last day of the month following the close of the calendar quarter during which the employing unit first becomes a subject employer. Thereafter, except as provided in Section 2 of this administrative regulation, the due date for contributions shall be [is] the last day of the month following the calendar quarter for which they are payable.

Section 2. The due date for payment of contributions shall be extended if a subject employer has erroneously paid contributions due under KRS Chapter 341 to another state or federal agency, or if an authorized representative of the division has misinformed an employer as to his liability or erroneously determined an employer's status on the basis of correct reports furnished to the division by the employer or his representative. In these cases, the due date shall be the 20th day following the mailing date of the first notice issued to the employer advising him of any amount due the division.

Section 3. Contributions shall be considered paid as of the date on which they are received by the Division of Unemployment Insurance as defined in 787 KAR 1:230.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:060. Separation for cause; reports.

RELATES TO: KRS 341.370, 341.530

STATUTORY AUTHORITY: 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires the employing unit to notify the division of a worker's separation from employment for cause by returning notices sent to the employer after an initial or reopened claim for benefits has been filed.

Section 1. Notice to Employers. (1) When an initial claim for benefits is filed by a claimant or when a reopened claim for benefits is filed by a claimant who has been employed since last claiming benefits, the Division of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing on Form UI-412A.

(2) If the claimant has worked for his next most recent employer in less than ten (10) weeks, the division shall [will] also notify his next most recent employer of the claim filing on Form UI-412A.

(3) If the claimant worked for neither his most recent nor next most recent employer in each of ten (10) weeks, the most recent employer for whom the claimant worked in each of ten (10) weeks shall [back to the beginning of the base period, will] be notified of the filing on Form UI-412A.

Section 2. If the claimant was separated from any notified employer's employ for a reason other than lack of work, the employer shall complete and return the "employer's notice of initial claim" or "employer's notice of reopened claim" to the local office indicated on the notice. [thereon.]

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TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 23, 1995 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:070. Reasonable time for protesting claim.

RELATES TO: KRS 341.370(4), 341.530(3)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines the term "reasonable time" within which an employer shall ~~[must]~~ protest a claim by a former worker. If the employer is not the most recent employer he shall be [A nonmost recent employer is now] given fifteen (15) days within which to protest if he has not received Form UI-412A, "employer's notice of initial claim" or "employer's notice of reopened claim" ~~[instead of ten (10)]~~.

Section 1. Except as provided in Section 2 of this administrative regulation the reasonable time referred to in KRS 341.370(4) and 341.530(3) shall not extend beyond ten (10) days after the date of the first notice to the employer from the department that a claim has been filed. In computing this ten (10) day period, the day following the date of mailing of the notice shall be considered the first day, and the date the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

Section 2. If the employer is not the worker's most recent employer and has not received Form UI-412A as provided in 787 KAR 1:060, the reasonable time referred to in KRS 341.530(3) shall not extend beyond fifteen (15) days after the date of first notice to the employer from the department that a claim has been filed. In computing the fifteen (15) day period the day following the date of mailing of the notice shall be considered the first day, and the day the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 23, 1995 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:090. Claimant's reporting requirements.

RELATES TO: KRS 341.350, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the registration and reporting requirements that the claimant must meet to draw benefits and the date when the claim will be valid. It further sets out the length of time a claim may be backdated and the procedures for mail claims.

Section 1. Registration for Work. (1) A worker shall be registered for work with the state employment service before he shall be eligible

to receive benefits. ~~[The procedures a claimant shall follow to meet the work registration requirement depend on the claimant's reemployment prospects.]~~

(2) At the time a claimant completes an initial application for benefits, he shall be [ie] assigned a group classification code (A, B, C, or D) based upon his reemployment prospects.

(a) Group A consists of [includee] claimants who definitely have depended on their work for their individual or family support and whose employment record indicates a firm attachment to the labor market, including [This group includee] workers:

1. Unemployed due to a temporary layoff with good return prospects but no definite recall date;

2. [workers] With a steady employment record who are unemployed [and unemployment] due to lack of work; or

3. [workers] With a highly specialized employment record.

(b) Group B includes:

1. Workers unemployed as a result of a mass layoff who have positive return prospects with their last employer;

2. Workers unemployed because of a labor dispute in the establishment where they have been employed;

3. Unemployed workers of a local employer whose performance strongly indicates reemployment for such workers even though a definite recall date has not been set;

4. Claimants who are working part time with a regular employer but who are eligible for partial benefits; and

5. Claimants who are members of unions which are responsible for securing their future employment.

(c) Group C includes workers whose work record indicates continuing questions of availability or ability for work. Those claimants who provide incomplete information shall be placed temporarily in group C.

(d) Group D consists of workers who [is the same as group C except availability or ability questions] require closer and more frequent scrutiny of availability and ability questions.

(3) During any benefit year, a claimant may be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) ~~[(2)]~~ The completion of an initial application for benefits shall serve as work registration for group "B" claimants. All other ["A", "C", and "D"] claimants shall report to the state employment service for an in-depth interview and completion of an ES-511 form in order to receive full job placement service. The registration shall remain active for six (6) months from the date of registration. ~~[during the worker's benefit year as defined in KRS 341.090(2).]~~

Section 2. Initial and Reopened Claims for Benefits. (1) In order for a worker to file an initial or reopened claim for benefits he shall report in person with the following proof of identity: Social Security card, valid driver's license with a photograph or other acceptable photo-identification to a state employment office which serves unemployment insurance claimants to complete an initial claim form and certifications required by the secretary to make a determination as to the worker's benefit eligibility. If any issues regarding the claimant's eligibility as defined in KRS 341.350 or a potentially disqualifying circumstance as defined in KRS 341.360 or 341.370 are detected, a fact-finding interview shall be scheduled at which the claimant may present all facts in support of his application.

(2) In areas serviced by a full-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker first reports to the state employment office for the purpose of filing a claim for benefits.

(3) In areas serviced by a part-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker becomes unemployed provided he reports to the part-time office for the purpose of filing a claim for benefits on the first day the

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office is open following his last day of work; otherwise the claim shall be dated as of the first day of the week in which the worker reports at a part-time or full-time state employment office which serves unemployment insurance claimants.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section the initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer, provided the worker reports to a state employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.

(5) Upon the presentation by the worker of reasons found to constitute good cause for failure to report at an earlier date, the secretary may authorize the backdating of initial or reopened claims in an area serviced by a full-time state employment office which serves unemployment insurance claimants to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first reported or indicated his desire to file a claim, and in an area serviced by a part-time state employment office which serves unemployment insurance claimants, to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.

Section 3. Continued Claims for Benefits. (1) In order for a worker, who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall report in person, except as hereinafter provided, to a state employment office which serves unemployment insurance claimants to complete a continued claim form and certification required by the secretary to determine the worker's continued eligibility for benefits as defined in KRS 341.350, 341.360 or 341.370.

(2) Continued claims for benefits shall cover the week or the two (2) weeks of unemployment (depending on whether the worker is reporting on a weekly or biweekly basis) immediately prior to the date on which they are filed.

(3) Upon the presentation by the worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary may authorize the backdating of continued claims in an area serviced by a full-time state employment office to cover a week or weeks of unemployment ended not earlier than twenty-eight (28) days prior to the date on which they are filed and in an area serviced by a part-time state employment office which serves unemployment insurance claimants to cover a week or weeks of unemployment ended not earlier than thirty-five (35) days prior to the date on which they are filed.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, a continued claim may be dated as the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer and for which week he filed a continued claim, provided the worker reports to a state employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.

(5) Continued claims for partial benefits shall be certified as to earnings when so required by the secretary, except that the failure of an employer to properly certify earnings shall not result in a denial of benefits otherwise due under the law.

Section 4. Mail Claims. (1) The secretary may authorize an individual to file his continued claims by mail if reporting in person would require expenditure of an unreasonable amount of travel or money. A continued claim shall cover the week or weeks indicated on the claim form.

(2) Claims filed by mail shall be considered filed on the day they are deposited in the mail and postmarked. The provisions of this administrative regulation governing the dating and backdating of

continued claims filed in areas serviced by a full-time state employment office shall also apply to claims filed by mail, and unless the claims are filed within the time prescribed herein, they shall not be allowed.

Section 5. Claims by Reemployed Workers. Notwithstanding the provisions of Section 3 of this administrative regulation, a worker, who having filed his initial claim for benefits and having established a benefit year and who by reason of having returned to full-time employment is unable to report in person to a state employment office, may file a continued claim for benefits by completing a continued claim form and certifications required by the secretary to determine the worker's continued eligibility for benefits and submitting the form by mail to the Division of Unemployment Insurance. The continued claim shall cover the week of unemployment indicated on the claim form provided that the week of unemployment ended not earlier than thirty-five (35) days prior to the date on which the claim was deposited in the mail.

Section 6. Eligibility Review. An unemployed worker claiming benefits shall report in person to a state employment office, as directed, on a periodic basis for the purpose of continued benefit eligibility review.

Section 7. Failure to Comply with Administrative Regulations. Notwithstanding any other provisions of this administrative regulation, if the secretary finds that the failure of any worker to file a claim for benefits, and register for work within the specified time, was due to the failure on the part of the employer to comply with any of the provisions of these administrative regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim or to failure by the division's personnel to discharge necessary responsibilities, the worker shall have fourteen (14) days after he has received appropriate notice of the findings of the secretary, within which to file a claim, provided that no claim shall be allowed which is filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:100. Week of unemployment [defined].

RELATES TO: KRS 341.080

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.080(3) provides that the cabinet shall prescribe by administrative regulation the period of time which shall constitute a week of unemployment for the purpose of administering the Unemployment Insurance Program in accordance with KRS Chapter 341. The purpose of this administrative regulation is to satisfy the statutory requirement. [This administrative regulation defines the term "week of unemployment."]

Section 1. A [The term] "week of unemployment" [as used in KRS 341.080(3)] shall be [mean] a calendar week of seven (7) consecutive calendar days, beginning 12:01 a.m., Sunday and ending 12 midnight the following Saturday. A week of unemployment beginning in a benefit year shall be deemed to be wholly in that benefit year.

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TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
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CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:190. Recoupment and recovery.

RELATES TO: KRS 341.415
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY AND FUNCTION: KRS 341.415(1) limits recoupment and recovery in cases of benefits overpaid as a result of "departmental error". The purpose of this administrative regulation is to delineate the actions and instances which shall constitute ~~[defines the term]~~ "departmental error" for the purpose of recovery and recoupment. This administrative regulation further [of improperly paid unemployment insurance benefits and] requires that the department shall provide a listing of overpayments with liens to credit reporting agencies. [This administrative regulation shall ensure that department liens shall be considered on a parity with other liens listed in KRS 341.415(3), and to facilitate recoupment.]

Section 1. The following shall constitute "departmental error" in the payment of benefits [means]:

- (1) Errors in computing benefit rate;
- (2) Incorrect weekly payment due to failure to consider deductible amount;
- (3) Payment beyond the expiration of the benefit year;
- (4) Payment in excess of maximum benefit amount;
- (5) Payment under incorrect program where no program adjustment can be made;
- (6) Retroactive nonmonetary determinations;
- (7) Monetary redeterminations;
- (8) Payment during a period of disqualification;
- (9) Payment to wrong claimant;
- (10) Erroneous payments resulting from a malfunction of automatic data processing equipment provided the malfunction is the result of human error in the data entry process.

Section 2. ~~(1) [Filing of Liens.]~~ The department shall, on a monthly basis, compile a listing of outstanding overpayments on which a lien has been created. The listing shall be made available to credit reporting agencies. The listing shall be compiled in an electronic format which the department has the capability to produce if requested by the credit reporting agency.

(2) Overpayments that result from departmental error shall not be subject to the filing of a lien nor reporting to credit reporting agencies. [Liens are not filed on overpayments that result from departmental error, and they shall not be made available to credit reporting agencies.]

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
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CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:240. Fraud disqualifications.

RELATES TO: KRS 341.370
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY AND FUNCTION: KRS 341.370(2) provides that a worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary. This administrative regulation establishes the number of additional weeks of disqualification to be imposed.

Section 1. Unreported Earnings. If a determination is issued finding that a claimant with fraudulent intent did not report wages earned during a week of unemployment for which unemployment insurance benefits were claimed, in addition to the disqualification imposed for each week, an additional period of disqualification shall ~~[will]~~ be imposed for each week of unreported earnings as follows: six (6) weeks for each week the unreported earnings are less than one and one-fourth (1¼) times the weekly benefit amount and twelve (12) weeks for each week the unreported earnings are equal to or more than one and one-fourth (1¼) times the weekly benefit amount, except that no period of additional disqualification shall ~~[will]~~ be less than twelve (12) weeks.

Section 2. Misrepresentation or Nondisclosure. If a determination is issued that a claimant through fraudulent misrepresentation or nondisclosure of fact, other than unreported earnings which is addressed in Section 1 of this administrative regulation, attempted to establish his right to or the amount of his unemployment insurance benefits, in addition to the disqualification imposed for that week, an additional twenty-six (26) week period of disqualification will be imposed from the date of discovery of the misrepresentation or nondisclosure.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
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CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:270. Covered employment.

RELATES TO: KRS 341.050, 341.055
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY AND FUNCTION: This administrative regulation sets forth conditions affecting certain covered and noncovered employment.

Section 1. Service by Officers, Directors, and Stockholders of Corporations. Within a corporation:

- (1) An officer shall be [ie] presumed to be in covered employment if, under the corporation's charter, bylaws, or minutes he is required to perform some service, whether or not the service is actually performed.

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(2) Stockholder, directors, or officers who received remuneration in the form of salaries or wages (that is, carried on the corporation payroll records or provided for in its bylaws or minutes) shall be [are] presumed to be in covered employment whether or not services are actually performed.

(3) Directors of corporations who perform no other service for the corporation other than to attend directors' meetings shall not be [are not] in covered employment.

Section 2. Family Exempt Employment. In applying family exemption:

(1) Family exemption applies only in proprietorships or partnerships. In a partnership, an exempt relationship must exist with each partner in order for employment to be noncovered.

(2) Stepchildren under age twenty-one (21) who are employed by their parent(s) shall bear the same family exempt relationship as that of natural or adopted children, but only if the stepparent(s) claim them as exemptions on federal and state income tax returns.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

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CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 1:290. Contract construction rates.

RELATES TO: KRS 341.070, 341.272

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines contract construction for the purposes of rate assignment under KRS 341.272.

Section 1. Definition. For the purpose of rate assignment, those types of service to be considered as contract construction shall be [are] those listed in the Federal Standard Industrial Classification Manual, 1987, under Major Groups 15, 16, and 17, and those listed under Major Group 87 engaged in management of construction carried out by others, which are adopted by reference. Copies of these chapters shall be [are] available for public inspection and copying in the office of the Tax Status and Accounting Branch, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. to 4:30 p.m. Monday through Friday, or may be obtained by writing to the above address or by telephone at (502) 564-2272.

Section 2. To be considered a contract construction employer, one-half (½) or more of the service upon which liability is established under KRS 341.070 shall be in contract construction.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 2:020. Confidentiality of records of the Department for Employment Services.

RELATES TO: KRS 195.020, 195.040

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: The Cabinet for Workforce Development is authorized by KRS 151B.020 to develop and to adopt administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. The function of this administrative regulation is to designate certain records of the cabinet's Department for Employment Services as confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The following documents and records pertaining to the cabinet's implementation of the Job Training Partnership Act (JTPA) in Kentucky shall be confidential and shall not be disclosed [are deemed confidential and not subject to disclosure] by the Department for Employment Services.

(1) JTPA-1, application form.

(2) JTPA-20, verification of eligibility form and related source documents.

Section 2. Department for Employment Services records other than JTPA. The Cabinet for Workforce Development, Department for Employment Services has determined the following records to be confidential and not subject to disclosure:

(1) ES-507, temporary application form for selected employers.

(2) ES-508, job referral card.

(3) ES-511, application card.

(4) ES-514, job order form.

(5) ES-518, test record card.

(6) ES-519, test record card.

(7) ES-614, counseling record and employability plan.

Section 3. Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

Section 4. Sharing of Information as Authorized by Law. Nothing in this administrative regulation shall prohibit the sharing of confidential information in accordance with KRS 194.060(2) and 341.190.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

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CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (As Amended)

787 KAR 2:030. Classifying a person as unemployed; appeals.

RELATES TO: KRS 141.065, Administrative Order HR 86-1

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 141.065 provides a credit to taxpayers for hiring a person classified as unemployed. The Depart-

ment for Employment Services is required by Administrative Order HR 86-1 to perform all administrative functions pertaining to the Unemployment Tax Credit Program. The Secretary of the Cabinet for Workforce Development may adopt rules and administrative regulations as are necessary to implement the Unemployment Tax Credit Program and as are necessary to cooperate with the Revenue Cabinet for the proper administration of the program. The function of this administrative regulation is to establish when a person is classified as unemployed for purposes of the Unemployment Tax Credit Program, and to establish the appeals process and general rules for the conduct of hearings regarding the denial of the unemployment tax credit to a taxpayer.

Section 1. Definitions. (1) "Actively seeking work" means a person making a reasonable effort to obtain work at least sixty (60) days prior to hire as might be expected of a prudent person under like circumstances, including occupations, salary, number of employing firms in area and distance involved.

(2) "Full-time employment" means, for labor market attachment purposes, if a person worked more than twenty-three (23) hours per week or more than 100 hours per month for at least thirty (30) days prior to the sixty (60) day, minimum unemployed period.

(3) "Labor market attachment" means had full-time employment before the sixty (60) day minimum unemployed period. Self-employment can be used to meet this requirement.

(4) "Readily available" means a person who at least sixty (60) days prior to hire was willing and able to enter into full-time employment; and possessing the ability to overcome any barriers, including arranging child care, part-time work or school schedules, transportation, or other conditions that would prevent an individual from accepting full-time employment.

Section 2. (1) A person shall be considered "classified as unemployed" for purposes of the Unemployment Tax Credit Program if:

(a) Prior to the sixty (60) day minimum unemployment period, the person had prior labor market attachment; and

(b) During the sixty (60) day minimum unemployment period prior to being hired was:

1. ~~[Was]~~ Not working; or
2. ~~[Was]~~ Employed not more than twenty-three (23) hours per week; or
3. ~~[Was]~~ Employed not more than 100 hours per month; and
4. ~~[Was]~~ Actively seeking and readily available for full-time employment.

(2) Involvement in a strike or labor dispute during the sixty (60) day minimum unemployment period shall ~~[does]~~ not meet the definition of unemployment for purposes of the Unemployment Tax Credit Program.

Section 3. Request for Reconsideration. (1) Any party aggrieved as a result of the denial of the unemployment tax credit to a taxpayer shall request a reconsideration of the denial by contacting the state tax credit unit. ~~[until]~~ The request for reconsideration shall be in writing. The request for reconsideration shall be filed within fifteen (15) days of the mailing date of the denial notice.

(2) The aggrieved party shall submit any additional information to be considered during the reconsideration process in writing within ten (10) days of the mailing date of the request for reconsideration.

(3) The state tax credit unit shall issue its decision within forty-five (45) days of receipt of the request for reconsideration. Upon reconsideration, a certificate may be issued or a second denial letter stating appeal rights for a formal hearing may be issued.

Section 4. Appeals to Hearing Officer. (1) Within fifteen (15) days of the mailing date of a second denial notice, an aggrieved party shall file a written request for hearing with the state tax credit unit. Upon

receipt of the written request for hearing, the Secretary of the Cabinet for Workforce Development shall appoint an impartial hearing officer to hear and decide appealed denials.

(2) A hearing shall be scheduled and commenced within sixty (60) days of receipt of the request for hearing. Notice of the hearing shall be mailed by certified mail, return receipt requested, to the parties.

(3) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses, and any other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences shall ~~[are to]~~ be open to the public. A written prehearing conference report shall be part of the record.

(4) Any party to a hearing and the administering agency may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. ~~[No]~~ Depositions shall not be permitted for the purpose of discovery; however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas, and may admit relevant and probative evidence, and shall conduct the hearing in accordance with reasonable administrative practice.

(5) All testimony at the hearing shall be recorded.

(6) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony, or argument.

(7) Within thirty (30) days of adjournment of the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the record of the proceeding.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

**LABOR CABINET
Department of Workers' Claims
(As Amended)**

803 KAR 25:150. Workers' compensation alternative dispute resolution systems.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260, 342.277

NECESSITY AND FUNCTION: KRS 342.277 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations putting forth the mechanism and criteria by which the Department of Workers' Claims may recognize as valid and binding a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative. KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate ~~[rules and]~~ administrative regulations as are necessary to carry on the work of the Department of Workers' Claims and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to establish a mechanism by which the commissioner may recognize as valid and binding a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative.

Section 1. Definitions. (1) "ADR" means alternative dispute resolution.

(2) "Collective bargaining agreement" means an agreement

between an employer and a recognized or certified exclusive bargaining representative concerning workers' compensation claims and the resolution of workers' compensation disputes.

(3) "Certification" means the order issued by the commissioner advising the employer and the recognized or certified exclusive bargaining representative that a program for alternative dispute resolution of disagreements as to entitlement to workers' compensation benefits for employees of the employer has been approved.

(4) "Recognized or certified exclusive bargaining representative" means the entity recognized or certified by the employees of an employer as the employees' representative for purposes of resolution of disputes relating to the employees' entitlement to workers' compensation benefits.

(5) "ADR plan administrator" means the person or entity designated by an employer and the recognized exclusive bargaining representative as the day-to-day administrator of the program for resolutions of disputes as to entitlement to workers' compensation benefits and the amount, manner of payment, and duration of benefits for work-related injuries and occupational diseases.

Section 2. Application; Plan Requirements. (1) Any employer and the recognized or certified exclusive bargaining representative, through their designated ADR plan administrator may apply for certification of a plan which supplements, modifies, or replaces the provisions of KRS Chapter 342 that relate to the resolution of disputes. The format for the application is set forth in Appendix A. The application and appended materials shall demonstrate that:

(a) The employer and the recognized or certified exclusive bargaining representative have entered into a binding collective bargaining agreement adopting the ADR plan for a period of no less than two (2) years and appointing the ADR plan administrator for no less than a period of one (1) year;

(b) Contractual agreements have been reached with the employer's workers' compensation carrier, group self-insurance fund, and any excess carriers relating to the ADR plan.

(c) Procedures have been established by which claims for benefits by employees will be lodged, administered and decided while affording procedural due process.

(d) The plan has designated forms upon which claims for benefits shall be made. Such forms shall comport substantially with the Procedure for Adjustments of Claim forms prescribed by 803 KAR 25:010.

(e) The system and means by which the employer's obligation to furnish medical services under KRS 342.020 and vocational rehabilitation and retraining benefits under KRS 342.732 and 342.710 shall be fulfilled and providers selected.

(f) The method by which mediators or arbitrators are to be selected.

(g) The decision of a mediator or arbitrator upon a referred matter shall have the same force and effect as that of an administrative law judge under KRS Chapter 342.

(h) Income benefits for disability will be no less than those provided by KRS Chapter 342.

(2) The commissioner shall review the application within thirty (30) days and by written order served upon the ADR plan administrator notify that the plan had been certified, denied, or needs to be amended, affording the applicant thirty (30) days in which to make suggested amendments. Any order denying an application shall specifically set forth the basis of the denial.

(3) Any applicant aggrieved by the order of the commissioner denying an application may within fifteen (15) days of the date of that order file with the commissioner a request for hearing setting forth a concise statement of the reasons why the commissioner's decision should be changed. The commissioner shall in no less than thirty (30) days schedule and hold a hearing pertaining to the matter. Within ten (10) days of the conclusion of the hearing, the commissioner shall issue a final order adopting, modifying or reversing the prior order

relative to the application. An applicant aggrieved by that order may appeal to the Franklin Circuit Court within thirty (30) days of the entry of the order.

Section 3. Employees' Claims for Workers' Compensation Benefits. (1) Claims for benefits shall be filed with the ADR plan administrator within those periods of limitation prescribed by KRS Chapter 342. Within ten (10) days of the filing of a claim, the plan administrator shall serve a copy of the claim application upon the commissioner, who shall maintain records of all ADR claims and resolutions.

(2) Settlements of claims presented to the plan administrator shall be evidenced by a settlement agreement substantially comporting with Form 110-0, 110-1, or 110-R as adopted at 803 KAR 25:010. All such settlements shall be filed with the ADR plan administrator, who within ten (10) days shall forward a copy to the commissioner for recording.

(3) Upon assignment of claims, unless settled, mediators and arbitrators shall render final orders containing essential findings of fact, rulings of law and referring to other matters as pertinent to the questions at issue. The ADR plan administrator shall maintain a record of the proceedings.

Section 4. Special Fund Participation. (1) Participation by the special fund in any claim pending before the ADR plan administrator, a mediator, or arbitrator shall be sought as soon as possible after the existence of grounds for special fund liability is known. Written request for participation should be addressed to: Director of Special Fund, ATTN: ADR Clerk, Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky 40601. The request shall:

(a) Specify the factual basis of alleged special fund liability;

(b) Be accompanied by a copy of all written materials pertinent to the claim held by the requesting party and any material discoverable under KRS Chapter 342; and

(c) Be accompanied by a current medical waiver and consent form executed by the claimant.

(2) Within fifteen (15) days following receipt of a request for participation in a pending ADR claim, the director of the special fund shall notify the parties, in writing, of whether it elects to join as a party in the ADR proceedings. A failure of the director of the special fund to respond to a request for participation shall be deemed a negative election.

(3) If the director of the special fund declines to participate in the ADR proceedings, the claimant, the employer, and the employer's insurance carrier shall retain the right to proceed against the special fund in the manner prescribed by KRS Chapter 342. Any claim against the special fund shall be filed with the Department of Workers' Claims within thirty (30) days after an award or settlement through ADR becomes final.

Section 5. Appeals. (1) A party to an ADR proceeding may appeal a final order to the Workers' Compensation Board in the same manner and in the same time frame as prescribed for an appeal from the decision of an administrative law judge. A copy of the notice of appeal shall be served by the appealing party on the plan administrator, who shall within twenty (20) days file with the commissioner a copy of the record of the proceedings before the mediator or arbitrator.

(2) The final order of the mediator or arbitrator shall be affirmed upon review unless the Workers' Compensation Board determines:

(a) The mediator or arbitrator exceeded the authority vested by applicable law;

(b) The final order is incomplete, ambiguous or so contradictory as to make implementation impracticable;

(c) The mediator or arbitrator was patently biased or partial;

(d) The mediator or arbitrator refused to admit reliable material or probative, but not redundant, evidence, which if accepted would tend

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to change the outcome of the proceeding; or

(e) The final order of the mediator or arbitrator was procured by fraud.

(3) No issue or point of error shall be raised before the board which was known or should have been known below, but was not raised before the arbitrator.

Section 6. Reporting Requirements. Annually, each ADR plan administrator shall submit a report to the commissioner containing the following information:

- (1) The number of employees within the ADR program;
- (2) The number of occurrences of work-related injuries or diseases;
- (3) The breakdown within the ADR program of injuries and diseases treated;
- (4) The total amount of disability benefits paid within the ADR program;
- (5) The total medical treatment cost paid within the ADR program;
- (6) The number of claims filed within the ADR program; and
- (7) The disposition of all claims.

APPENDIX A APPLICATION FOR CERTIFICATION OF AN ALTERNATIVE DISPUTE RESOLUTION PROGRAM

APPLICATION FOR CERTIFICATION

- (1) Employer's name, address, and telephone number.
- (2) Recognized or certified exclusive bargaining representative's name, address, and telephone number.
- (3) ADR plan administrator's name and address.
- (4)(a) Contract adopting ADR plan and appointing the ADR plan administrator.
- (b) Contract between employer and employer's workers' compensation carrier, group self-insurance fund, and any applicable excess carriers.
- (c) Description of procedures by which claims for benefits are to be lodged, administered and decided.
- (d) Forms substantially comporting with 803 KAR 25:010.
- (e) Description of procedure by which the employer is to furnish medical services, vocational rehabilitation, and retraining benefits, and method of selecting providers.
- (f) Description of the method by which mediators or arbitrators are to be selected.
- (g) A statement demonstrating that the decision of a mediator or arbitrator shall have the same force and effect as that of an administrative law judge.
- (h) A statement that income benefits for disability will be no less than those provided by KRS Chapter 342.

Employer Signature

Date: _____

Subscribed and Sworn to before me by _____, on
this the _____ date of _____, 19____.

Notary Public

My Commission expires _____, 19____.

Exclusive Bargaining Representative
Signature

Date: _____

Subscribed and Sworn to before me by _____, on
this the _____ date of _____, 19____.

Notary Public

My Commission expires _____, 19____.

ADR PLAN ADMINISTRATOR SIGNATURE

Date: _____

Subscribed and Sworn to before me by _____, on
this the _____ date of _____, 19____.

Notary Public

My Commission expires _____, 19____.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: August 15, 1995

FILED WITH LRC: August 15, 1995 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction (As Amended)

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

RELATES TO: KRS 198B.658, 198B.666

STATUTORY AUTHORITY: KRS 198B.658

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC contractor's law. This administrative regulation is a supplement to 815 KAR 8:010 and 8:020, and establishes a mechanism for the board to review and approve equivalent experience when an applicant seeks to become licensed as an HVAC master contractor or journeyman mechanic by examination. This administrative regulation is necessary to treat qualified persons similarly and not to unfairly discriminate or deny equal protection with respect to residents and nonresidents, alike.

Section 1. Procedure for Board Review. For applicants seeking to be licensed on the basis of experience and examination:

(1) The board may authorize the Department of Housing, Buildings and Construction to review all applicants and issue licenses to all persons who meet the technical requirements of 815 KAR 8:010 and 8:020.

(2) Any application which is not approvable by the department, pursuant to subsection (1) of this section, shall be referred to and reviewed by the board ~~[pursuant to this administrative regulation]~~.

(3) The board shall review the credentials of the applicant and approve the application if it finds that the applicant's credentials are equivalent to the requirements provided in 815 KAR 8:010 and 8:020.

Section 2. Equivalency Standard. The board may consider the following in reviewing an applicant's credentials:

(1) Installation, maintenance, alteration, servicing, repair of HVAC systems;

(2) The skilled instruction of others in HVAC activities and knowledge;

(3) Any other related technical, mechanical or educational experiences relating to the skills, knowledge and techniques needed for type of license requested;

(4) The quality and duration of the experience, without regard to

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the time frame or the location in which the experience was completed;
(5) Other information and documentation as the board may deem necessary or appropriate.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 12, 1995
FILED WITH LRC: July 13, 1995 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction (As Amended)

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

RELATES TO: KRS 227.450 through 227.500

STATUTORY AUTHORITY: KRS 227.4901

NECESSITY AND FUNCTION: In 1990, the General Assembly enacted KRS 227.4901 which requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary in order to establish procedures of administration and reasonable fees to carry on the certification program. This amendment is necessary to establish a revival and reinstatement fee for those certified electrical contractors who fail to renew their certification in a timely manner. ~~[remove the antiquated grandfather clause and to clarify the penalty for failure to renew certification on a timely basis.]~~

Section 1. Definitions. (1) ~~["Department" means the Department of Housing, Buildings and Construction.~~

(2) "NAIE" means the examination based upon the National Electrical Code which is developed, administered and scored by the National Assessment Institute.

(2) ~~[(3)]~~ "NCPCCI" means the National Certification Program for Construction Code Inspectors.

(3) ~~[(4)]~~ "Kentucky Certificate of Electrical Contractor Examination" means the written document issued by the department which certifies that the person whose name is listed thereon has successfully completed the examination required by this administrative regulation.

Section 2. Approved Examinations. (1) After the effective date of this amendment, any person seeking to obtain a Kentucky Certificate of Electrical Contractor Examination shall pass the examination known as the NAIE.

(2) The department shall issue or renew a Kentucky Certificate of Electrical Contractor Examination to any person who complies with the terms of this administrative regulation.

Section 3. Proof of Insurance. (1) An applicant shall submit to the department proof of \$250,000 liability insurance for electrical construction work by certificate from the insurance company and he shall also submit an affidavit verifying compliance with Kentucky worker's compensation and unemployment insurance laws.

(2) If the applicant submits proof of insurance as set forth in subsection (1) of this section, the department shall indicate that fact on the applicant's certificate. This proof shall be submitted annually, upon renewal, in order to continue to be noted upon the certificate.

Section 4. Application for Certificate. (1) Application shall be made to the department by the individual seeking certification on

forms as outlined in Section 7 ~~[6]~~ of this administrative regulation.

(2) The original application shall be accompanied by a fee of \$100 to cover the administrative costs of processing the application, verifying examination scores and issuing certificates.

~~(3) [Each person seeking certification pursuant to this administrative regulation shall be required to pay an additional annual renewal fee in the sum of twenty five (25) dollars no later than June 30 of each year in order to maintain his certification. Failure to renew shall require the applicant to pay the renewal fee and to requalify, pursuant to this administrative regulation as a new applicant for certification.~~

~~(4)]~~ The Kentucky Certificate of Electrical Contractor Examination is not a license to do business as an electrical contractor.

Section 5. Renewal of Certificates. (1) General. Each person seeking certification pursuant to this administrative regulation shall be required to pay an additional annual renewal fee in the sum of twenty-five (25) dollars no later than June 30 of each year in order to maintain the certification.

(2) Revival fee. Any certified electrical contractor who fails to renew his certification on or before July 1 of each year may have his certification renewed upon payment of the required renewal fee and a revival fee. The revival fee paid between July 1 and December 31 shall be twenty-five (25) dollars, in addition to the renewal fee. If the renewal and revival fees are not paid by January 1 of the following year, the certification shall be automatically cancelled. Upon cancellation of the certification, the revival fee paid on or after January 1 shall be fifty (50) dollars.

(3) Reinstatement ~~[fee]~~. The certification may ~~[then]~~ be reinstated upon payment of all delinquent renewal fees plus the ~~[a]~~ revival fee of fifty (50) dollars.

Section 6. ~~[5.]~~ Notice of Penalty. Any certificate or notation of insurance obtained by misrepresentation or fraudulent representation shall void the certificate or notation.

Section 7. ~~[6.]~~ Electrical Contractor Certification Application Forms. (1) Application for electrical contractor certification.

COMMONWEALTH OF KENTUCKY DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION APPLICATION FOR ELECTRICAL CONTRACTOR CERTIFICATION

NAME:

ADDRESS:

CITY:

TELEPHONE #:

COMMONWEALTH OF KENTUCKY

COUNTY OF:

ZIP CODE:

DATE OF BIRTH:

SIGNED:

having been duly sworn, states all information herein contained is true and correct to the best of his knowledge and belief; and further states that he shall ~~[will]~~ comply with applicable statutes and rules and administrative regulations of the Department of Housing, Buildings and Construction.

Subscribed and sworn to before me this ___ day of _____, 19__.

My commission expires:

Notary Public:

County:

NOTE: Attach check or money order for \$100.00 payable to the State Treasurer, Commonwealth of Kentucky.

RETURN TO: Office of the State Fire Marshal
Electrical Contractor Certification Clerk
1047 U.S. 127 South, Suite #1
Frankfort, KY 40601-4337

OFFICE USE ONLY:

(2) Renewal application for electrical contractor certification.

ADMINISTRATIVE REGISTER - 917

CERTIFICATE #:
COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
RENEWAL APPLICATION FOR
ELECTRICAL CONTRACTOR CERTIFICATION

NAME:

ADDRESS:

CITY:

ZIP CODE:

TELEPHONE #:

DATE OF BIRTH:

COMMONWEALTH OF KENTUCKY

COUNTY OF:

SIGNED:

having been duly sworn, states all information herein contained is true and correct to the best of his knowledge and belief; and further states that he shall ~~[will]~~ comply with applicable statutes and the rules and administrative regulations of the Department of Housing, Buildings and Construction.

Subscribed and sworn to before me this ___ day of _____, 19__.

My commission expires:

Notary Public:

County:

NOTE: Attach check or money order for \$25.00 payable to the State Treasurer, Commonwealth of Kentucky.

RETURN TO: Office of the State Fire Marshal
Electrical Contractor Certification Clerk
1047 U.S. 127 South, Suite #1
Frankfort, KY 40601-4337

OFFICE USE ONLY:

(3) Kentucky Workers' Compensation and Unemployment Insurance compliance.

COMMONWEALTH OF KENTUCKY
DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION
Kentucky Workers' Compensation & Unemployment Insurance

* The use of this form is optional. If you want your wallet card to indicate compliance with insurance, unemployment insurance and workers' compensation laws, file this form and a copy of your insurance certificate along with your application.

The affiant herein does swear or affirm that he is in full compliance with Kentucky Workers' Compensation and Unemployment Insurance laws and that he has a valid liability insurance policy covering his business of electrical contracting and installation in the total amount of at least \$250,000 as shown on the attached certificate from the insurance company.

Applicant:

STATE OF KENTUCKY

COUNTY OF:

Subscribed and sworn to me this ___ day of _____, 19__.

Notary Public:

My commission expires:

*NOTICE: If this information is not provided, you shall provide it for every electrical permit you seek from the city or county.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: August 4, 1995

FILED WITH LRC: August 9, 1995 at 10 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

RELATES TO: KRS 224.01, 224.10, 224.60, 40 CFR Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.01-100, 224.60-105, 40 CFR Part 280, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation defines terms used throughout this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or other administrative regulations of 401 KAR Chapter 42, or otherwise specifically indicated by context, terms in 401 KAR Chapter 42 shall have the meanings given in this administrative regulation.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(2) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a UST system.

(3) "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a release, but outside of the influence of the release. There are two (2) types of background as follows:

(a) "Natural background" means the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and

(b) "Ambient background" means the amount of both naturally-occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the site and at levels not attributable to activities on the property.

(4) "Belowground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(5) "Beneath the surface of the ground" means, for purposes of identifying an underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or otherwise covered with earthen materials.

(6) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electro-

chemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(7) "Cathodic protection tester" means a person accredited or certified as a cathodic protection tester by the National Association of Corrosion Engineers (NACE International).

(8) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et seq.).

(9) "Change in service" means continued use of a UST system to store a nonregulated substance.

(10) "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.

(11) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

(12) "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.

(13) "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(14) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a UST system.

(15) "Corrosion expert" means a person accredited or certified as being a corrosion expert by the National Association of Corrosion Engineers (NACE International), or a professional engineer registered by the Kentucky State Board of Registration for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(16) "Dielectric material" means a material that does not conduct direct electrical current.

(17) "Domestic-use well, spring, cistern, or well head protection area" means a well, spring, cistern, or well head protection area currently used or potentially used by humans for personal, commercial, or agriculture purposes.

(18) "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

(19) "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that no more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(20) "Environmentally sensitive feature" means surface waters and wetland areas. The term shall not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas.

(21) "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal facility.

(22) "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(23) "Existing UST system" means a UST system used to contain

an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the UST system; and

(b) 1. A continuous on-site physical construction or installation program has begun; or

2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the UST system to be completed within a reasonable time.

(24) "Facility" or "site" means the property on which the UST system is located.

(25) "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(26) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, and the U.S. Government Printing Office.

(27) "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(28) "Free product" means a regulated substance that is present as a nonaqueous phase liquid (for example, liquid not dissolved in water).

(29) "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(30) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(31) "Hazardous substance UST system" means a UST system that:

(a) Contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of such a hazardous substance and petroleum; and

(b) Is not a petroleum UST system.

(32) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(33) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(34) "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(35) "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(36) "Leak-detection system" means a method of monthly monitoring capable of detecting a failure in a UST system of either the primary or secondary containment system, or capable of detecting the presence of a release of a regulated substance outside the UST system.

(37) "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(38) "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(39) "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(40) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used as a fuel in the operation of a motor or engine.

(41) "Newly discovered UST system" means a UST system at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(42) "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

(43) "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(44) "Off site" means any property other than the facility.

(45) "Operation" means the storage and dispensing of a regulated substance from a UST system.

(46) "On the premises where stored" means, with respect to heating oil, UST systems located on the same property where the stored heating oil is used.

(47) "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed under 401 KAR 42:070 or 401 KAR 42:071.

(48) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

(49) "Overfill release" means a release that occurs when a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(50) "Owner" means:

(a) In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of a regulated substance; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned the UST system immediately before the discontinuation of its use.

(51) "Permanent closure" means either removing the UST system from the ground or filling the UST system with an inert solid material or a combination of both methods.

(52) "Permanently closed" means a UST system was:

(a) Closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, in accordance with applicable industry standards at the time of closure, and in such a manner as to prevent any future use of the UST system;

(b) Closed after December 22, 1988, but prior to December 19, 1990, in accordance with 40 CFR 280.71 through 280.74 [Subpart G];

(c) Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at that time;

(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the emergency administrative regulations that took effect on February 15, 1994; or

(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071 in effect at that time.

(53) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, or

political subdivision of a state. The term also includes a consortium, a joint venture, the United States government, or a commercial entity.

(54) "Petroleum" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(55) "Petroleum UST system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. The term includes those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(56) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of such materials).

(57) "Pipeline facilities (including gathering lines)" means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(58) "Point of compliance" means the [any] property boundaries [line] of the facility.

(59) "Regulated substance" shall have the meaning specified in KRS 224.60-100.

(60) ~~[(59)]~~ "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance into groundwater, surface water, surface or subsurface soils, or interstitial space between a UST system and its secondary barrier or secondary containment. The term shall not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.

(61) ~~[(60)]~~ "Release detection" means a method of determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between a UST system and its secondary barrier or secondary containment.

(62) ~~[(61)]~~ "Repair" means to restore a UST system component that has caused a release of a regulated substance from a UST system.

(63) ~~[(62)]~~ "Residential tank" means a tank located on property used primarily for dwelling purposes.

(64) ~~[(63)]~~ "Residual tank materials" means any accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

(65) ~~[(64)]~~ "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

(66) ~~[(65)]~~ "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(67) ~~[(66)]~~ "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment used to collect or transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.

(68) ~~[(67)]~~ "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.

(69) ~~[(68)]~~ "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a

demonstrable hydrologic connection to the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(70) ~~[(69)]~~ "Tank" means a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (for example, concrete, steel, plastic, or a combination of such materials) that provide structural support.

(71) ~~[(70)]~~ "Tank contents" means any accumulated tank water, bottom sediments, or mixture of product and water that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(72) ~~[(71)]~~ "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070, **Section 3.**

(73) ~~[(72)]~~ "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.

(74) ~~[(73)]~~ "Underground utility conduits" means any manmade underground conduit installed for utility purposes either on or off site.

(75) ~~[(74)]~~ "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent the release of a regulated substance. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.

(76) ~~[(75)]~~ "U.S. EPA" or "EPA" means the United States Environmental Protection Agency.

(77) ~~[(76)]~~ "UST system", "tank system", or "underground storage tank system" means an underground storage tank (as defined in KRS 224.60-100), connected underground piping, underground ancillary equipment, and containment system, if any.

(78) ~~[(77)]~~ "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Division of Waste Management
(Amended After Hearing)**

401 KAR 42:020. Performance standards for new UST systems.

RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart B ~~[Appendix H]~~, Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart B ~~[Appendix H]~~, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting ~~[releases]~~, corrective action~~[e]~~, closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems, ~~[underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to~~

~~the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems. [underground storage tanks.] This administrative regulation establishes requirements concerning performance standards, notification, and alternatives for upgrading existing UST systems.~~

Section 1. Adoption of Federal Regulations. (1) The requirements concerning performance standards, notification, and alternatives for upgrading UST systems are governed by 40 CFR Part 280, Subpart B (1994 [1990]) ~~and Appendix II (1990)].~~

(2) 40 CFR 280.22(b) allows for state forms to be used in lieu of federal forms for notification of UST systems. The document incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation and 401 KAR 42:200. ~~[underground storage tanks.]~~

Section 2. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Notification for ~~ef~~ Underground Storage Tank System Form", DEP Form 5024 (July 1995).

(2) The document referenced in subsection (1) of this section is available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays. ~~[The notification form for underground storage tanks in Kentucky is being incorporated by reference into this section. This form became effective in November 1990, and is available for distribution and inspection from the Underground Storage Tank Program, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.]~~

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 42:040. Release detection.

RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart D, Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart D, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action~~[e]~~, closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. ~~[underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems. [underground storage tanks.] This administrative regulation~~

establishes the requirements for release detection and recordkeeping for all UST systems.

Section 1. Adoption of Federal Regulations. (1) The requirements for release detection and recordkeeping for UST [underground storage tank] systems are governed by 40 CFR Part 280 Subpart D (1994 [1990]).

(2) The documents incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.

Section 2. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "Underground Storage Tank System Site Assessment Outline for External Release Detection Methods (Groundwater, Vapor, and Interstitial Monitoring)" (October [July] 1995); and

(b) "Kentucky Underground Storage Tank System (External Release Detection) Monitoring Well Form", DEP Form 8047 (July 1995).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, KY 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

Section 3. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 42:060[E]. Release response and corrective action for UST systems containing petroleum or hazardous substances.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subpart F, Part 281, 42 USC 6991 to 6991c [i]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subpart F, Part 281, 42 USC 6991c [EFFECTIVE: February 15, 1994]

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action~~[e]~~, closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. ~~[underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to~~

~~the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems [underground storage tanks]. This administrative regulation establishes the requirements for release response, site characterization, corrective action, and public participation.~~

Section 1. Adoption of Federal Regulation. (1) The requirements for release response, site characterization, corrective action and public participation for UST systems [underground storage tanks] are governed by 40 CFR Part 280 Subpart F (1994 [1990]).

(2) The documents incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.

Section 2. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "Underground Storage Tank System Site Check Outline" (October [July] 1995 [January 1994]); and

(b) "Underground Storage Tank System Site Investigation Outline" (October [July] 1995 [January 1994]);

(c) "Underground Storage Tank System Corrective Action Plan Outline" (October [July] 1995);

(d) "Underground Storage Tank System Release Response and Initial Abatement Requirements Outline" (October [July] 1995); and

(e) "UST Groundwater Sample Analysis [Analyses] Form", DEP Form 2013 (September 5 [July] 1995).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

Section 3. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)**

401 KAR 42:070[E]. Out-of-service UST systems, temporary closure and permanent [and] closure of UST systems, and change in service of UST systems.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991 to 6991c [i]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991c [EFFECTIVE: February 15, 1994]

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification,

minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action[s], closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. [underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems. [underground storage tanks.] This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems. [release detection and recordkeeping for all UST systems.]

Section 1. Applicability. ~~[Adoption of Federal Regulations. The requirements for out-of-service UST systems and closure are governed by 40 CFR Part 280 Subpart G (1990).]~~ (1)(a) This administrative regulation shall apply to any owner or operator of a UST system that has a release confirmed on or after January 1, 1996, or has submitted a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) (incorporated by reference in Section 2 of this administrative regulation) that has been received by the Underground Storage Tank Branch of the Division of Waste Management on or after January 1, 1996.

(b) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received **(or that reported a confirmed release)** between April 18, 1994 and January 1, 1996 shall comply with the closure requirements **(or, for a confirmed release report, the corrective action requirements)** in existence at the time the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the Division of Waste Management **(or, for a confirmed release report, the requirements in existence at the time the release was reported)**, unless a written request, signed by the owner or operator, is received by the cabinet. This request shall indicate that the owners and operators intend to close the site as specified in subsection (2) of this section and Sections 3 through 7 of this administrative regulation.

(c) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the Division of Waste Management **(or that reported a confirmed release)** prior to April 18, 1994 shall comply with the closure requirements **(or, for a confirmed release report, the corrective action requirements)** in existence at the time the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the Division of Waste Management **(or, for a confirmed release report, the requirements in existence at the time the release was reported)**, unless a written request, signed by the owner or operator, is received by the cabinet. This request shall indicate that the owners and operators intend to close the site as specified in subsection (2) of this section and Sections 3 through 7 of this administrative regulation, or as specified in 401 KAR 42:071.

(d) If the cabinet determines that a UST system that closed before December 22, 1988 poses a current or potential threat to human health, safety, or the environment, the owner or operator shall assess the excavation zone and close the UST system in accordance with subsection (2) of this section and Sections 3 through 7 of this administrative regulation.

(2) The documents incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation.

Section 2. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

- (a) "Underground Storage Tank System Closure Outline" (~~October [July] 1995 [January 1994]~~);
- (b) "Notice of Intent to Permanently Close Underground Storage Tank(s) Form", DEP Form 5025 (~~July 1995 [January 1994]~~); and
- (c) "Closure Assessment Report Form", DEP Form 4058 (~~July 1995 [November 1990]~~);
- (d) "Kentucky Underground Storage Tank Assessment Well Form", DEP Form 5033 (~~July 1995~~);
- (e) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks" (~~December 1987~~);
- (f) American Petroleum Institute Publication 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks" (~~May 1994~~); and
- (g) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks" (~~April 1992~~).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

Section 3. Temporary Closure. (1) If a UST system is temporarily closed, the owners and operators shall continue operation and maintenance of corrosion protection and release detection in accordance with 401 KAR 42:030 and 401 KAR 42:040. If a release is suspected or confirmed, the owners and operators shall comply with 401 KAR 42:050 and 401 KAR 42:060. Release detection is not required as long as the UST system is empty.

(2) If a UST system is temporarily closed for more than three (3) months, the owners and operators shall comply with the following requirements:

- (a) Leave vent lines open and functioning;
- (b) Cap and secure all other lines, pumps, man ways, and ancillary equipment; and
- (c) Submit an amended Notification for ~~of~~ Underground Storage Tank System Form (DEP Form 5024) (incorporated by reference in 401 KAR 42:020) to the Underground Storage Tank Branch of the Division of Waste Management indicating that the UST system has changed to temporary closure status.

(3) If a UST system is temporarily closed for more than twelve (12) months, the owners and operators shall permanently close the UST system in accordance with Section 4 of this administrative regulation if it does not meet either the performance standards in 401 KAR 42:020 (for new UST systems) or the upgrading requirements in 401 KAR 42:020 (for existing UST systems, except that the spill and overflow equipment requirements do not have to be met). The owners and operators shall permanently close the substandard UST system at the end of this twelve (12) month period, unless the cabinet provides an extension of the twelve (12) month temporary closure period. The owners and operators shall complete a closure assessment, in accordance with Section 5 of this administrative regulation, before applying for an extension.

Section 4. Permanent Closure and Changes in Service. (1)(a) Owners and operators shall notify the Division of Waste Management of their intent to permanently close or make a change in service for a UST system at least thirty (30) days prior to beginning either the permanent closure or change in service under subsections (2) and (3) of this section. This notice shall be submitted on the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) (incorporated by reference in Section 2 of this administrative regulation) or on a cabinet-approved form containing the same information. Initial abatement action shall not alleviate the owners and operators from notifying the cabinet of the intent to permanently close

a UST system; however, the cabinet may specify a shorter notification time prior to permanent closure.

(b) The Notice of Intent to Permanently Close Underground Storage Tank System Form shall only be valid for twelve (12) months following signature by the UST system owner, operator, or authorized representative. The closure assessment required under Section 5 of this administrative regulation shall be performed after submitting notification to the cabinet, but prior to completing the permanent closure or change in service.

(2) To permanently close a UST system, the owners and operators shall empty and clean the UST system by removing all tank contents and residual tank materials. All UST systems permanently taken out of service shall be either removed from the ground or filled with an inert solid material.

(3) Continued use of a UST system to store a nonregulated substance shall constitute a change in service. Before a change in service, the owners and operators shall empty and clean the UST system by removing the tank contents and residual tank materials. The owners and operators shall also conduct a closure assessment in accordance with Section 5 of this administrative regulation.

Section 5. Assessing the Site at a Temporary Closure, Permanent Closure or Change in Service. (1)(a) Before completing permanent closure or change in service of a UST system, or at the end of the twelve (12) month temporary closure period identified in Section 3(3) of this administrative regulation, the owners and operators shall measure for the presence of a release where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, the owners and operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this paragraph shall be satisfied if one (1) of the external release detection methods allowed in 401 KAR 42:040 is operating in accordance with the requirements in 401 KAR 42:040 at the time of closure and indicates that no release has occurred during the life of the UST system.

(b) The closure assessment required by paragraph (a) of this subsection shall be performed in accordance with the requirements of the Underground Storage Tank System Closure Outline (incorporated by reference in Section 2 of this administrative regulation). The Closure Assessment Report Form (DEP Form 4058) (incorporated by reference in Section 2 of this administrative regulation) shall be received by the Underground Storage Tank Branch of the Division of Waste Management within ninety (90) days after UST system removal, closure in place, or change in service.

(2) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (1) of this section, or by any other manner, the owners and operators shall begin initial response, initial abatement, site check, initial site characterization, free product removal, investigations for soil and groundwater contamination, corrective action, and public participation, in accordance with 401 KAR 42:060.

(3) The handling, transportation, and disposal of any regulated substance from a UST system and any contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials removed from the UST system or facility shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through 49.

Section 6. Closure Records. (1) In accordance with 401 KAR 42:030, the owners and operators shall maintain records that demonstrate compliance with closure requirements under Section 5 of this administrative regulation. The results of the closure assessment required by Section 5 of this administrative regulation shall be maintained for at least three (3) years after receipt of the closure letter indicating that no further action is required for the permanent

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closure or change in service.

(2) The records required by subsection (1) of this section shall be maintained by either the owner or operator who closed the UST system or by the current owner or operator of the facility. If the records cannot be maintained at the facility, they shall be mailed to the Underground Storage Tank Branch of the Division of Waste Management.

Section 7. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department of Environmental Protection Division of Waste Management (Amended After Hearing)

401 KAR 42:071. Voluntary closure for facilities that permanently closed a UST system or had a confirmed release prior to April 18, 1994.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation establishes the requirements for voluntary closure of facilities that permanently closed a UST system or had a confirmed release without permanent closure prior to April 18, 1994.

Section 1. Applicability. (1) This administrative regulation shall apply to any owner or operator of a facility that permanently closed a UST system or that had a release confirmed prior to April 18, 1994 without permanent closure, and who voluntarily submits a letter to the cabinet requesting to have the UST system reviewed for closure or confirmed release determination in accordance with this administrative regulation.

(2) The voluntary letter referenced in subsection (1) of this section shall contain the UST identification number for the facility; the identification number of the UST system for which the request is being made; the name, address, and phone number of the facility or company where the UST system is located; the name, address, and phone number of the UST system owner; and an explicit statement of the action being requested. The letter shall be signed by the owner or operator.

(3) An owner or operator who submits a letter pursuant to subsections (1) and (2) of this section shall perform a voluntary

closure in accordance with the document incorporated by reference in Section 2 of this administrative regulation.

Section 2. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Pre April 18, 1994 Underground Storage Tank (UST) System Voluntary Closure Outline" (October [July] 1995).

(2) The document referenced in subsection (1) of this section is available for inspection or copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

Section 3. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department For Environmental Protection Division Of Waste Management (Amended After Hearing)

401 KAR 42:080[E]. Classification of petroleum underground storage tank systems and listing of associated cleanup levels.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subparts F, G, Part 281, 42 USC 6991 to 6991c [i]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subparts F, G, Part 281, 42 USC 6991c

[EFFECTIVE: February 15, 1994]

NECESSITY AND FUNCTION: KRS 224.60-105 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations on underground storage tank (UST) systems to protect public health and the environment. The statute recognizes that the administrative regulations may distinguish between types, classes, and ages of UST systems. [underground storage tanks.] KRS 224.60-137 requires the cabinet to adopt standards for corrective action for a release into the environment from a petroleum UST system. This chapter identifies requirements for UST systems. This administrative regulation establishes facility classification and corrective action standards for petroleum UST systems. [storage tank. The corrective action standards are to be protective of human health and the environment and based upon a study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet states in detail why it did not accept a recommendation from the study. This administrative regulation complies with these requirements by establishing a classification scheme for petroleum underground storage tank systems and cleanup levels for benzene, toluene, ethylbenzene, and xylene released into the environment from tank systems containing gasoline, kerosene, jet fuel, or aviation fuel. The classification scheme and the cleanup levels are consistent with recommendations contained in the study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission, except as specified in the Regulatory Impact Analysis for this administrative regulation.]

Section 1. Scope and Applicability. ~~[(4)]~~ The document incorporated by reference in Section 2 of this administrative regulation sets forth a classification scheme for all petroleum UST [underground storage tanks] systems. The document also establishes cleanup levels for petroleum constituents. The ~~[benzene, toluene, ethylbenzene, and xylene released into the environment from tank systems containing gasoline, kerosene, jet fuel, or aviation fuel. Specific]~~ cleanup levels for ~~[these]~~ petroleum constituents at a particular facility are determined by the classification of the UST system. ~~[petroleum underground storage tank system are dependent upon the particular category into which the tank system is classified.]~~

~~(1)(a)~~ Subsection (2) of this section and Section 2 of this administrative regulation ~~[(2) The provisions of this administrative regulation]~~ shall apply to UST systems for which a ~~[any]~~ "Notice of Intent to Permanently Close Underground Storage Tank System ~~[(e)]~~ Form" (DEP Form 5025) ~~(incorporated by reference in 401 KAR 42:070)~~ is received by the Underground Storage Tank Branch of the Division of Waste Management ~~[cabinet]~~ on or after January 1, 1996 and to UST systems for which a confirmed release is reported ~~[confirmed]~~ after January 1, 1996. ~~[April 18, 1994, and]~~

~~(b)~~ Subsection (2) of this section and Section 2 of this administrative regulation shall apply to UST systems for which a confirmed release was reported or a ~~[these]~~ closure notice~~[e]~~ was received by the Underground Storage Tank Branch of the Division of Waste Management prior to January 1, 1996 ~~[April 18, 1994]~~ as follows:

1. ~~[(a)]~~ For any confirmed release reported prior to January 1, 1996 or any "Notice of Intent to Permanently Close Underground Storage Tank System Form" (DEP Form 5025) received ~~[by the cabinet]~~ prior to January 1, 1996 ~~[April 18, 1994]~~, but for which a closure letter had ~~[has]~~ not been issued by the cabinet prior to that date, the UST systems ~~[tanks]~~ addressed in that release report or closure notice may be closed under this administrative regulation if the owner or operator submits to the Underground Storage Tank Branch of the Division of Waste Management ~~[cabinet]~~ a letter indicating their commitment ~~[his desire]~~ to close the UST system or address the release ~~[have the closure processed]~~ pursuant to this administrative regulation.

2. ~~[(b)]~~ The letter referenced in subparagraph 1 of this paragraph ~~[(a) of this subsection]~~ shall contain the identification number for the site; the name, address, and phone number of the facility or company where ~~[at which]~~ the UST system is ~~[tanks are]~~ located; the name, address, and phone number of the tank owner; and an explicit statement of the action being requested. The letter shall be signed by the owner or operator. The request shall apply to all UST systems ~~[tanks]~~ referenced in the release report or closure notice received by the Underground Storage Tank Branch of the Division of Waste Management ~~[cabinet]~~ prior to January 1, 1996 ~~[April 18, 1994]~~.

~~(2)~~ The document incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation.

Section 2. Incorporation by Reference. (1) The following documents are ~~[ie]~~ hereby incorporated by reference:

~~(a)~~ "Petroleum Underground Storage Tank System Facility Classification Outline" (October ~~[July]~~ 1995 ~~[January 1994]~~);

~~(b)~~ "Classification Guide", DEP Form 6053 (October, 1995); and

~~(c)~~ "Affected Property Owner Consent Form", DEP Form 6054 (October, 1995).

~~(2)~~ The documents referenced in subsection (1) of this section are ~~[ie]~~ available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Ky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995
FILED WITH LRC: October 13, 1995 at 10 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Amended After Hearing)

702 KAR 3:280. School district Medicaid providers.

RELATES TO: KRS 156.070, 605.115

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.070 sets forth the Kentucky Board of Education's plenary powers over the management and control of local school districts and, along with KRS 156.160 gives the Kentucky Board of Education the authority to promulgate administrative regulations deemed necessary for the management of the school districts under its control. This administrative regulation is necessary to provide guidance for local school districts that are Medicaid providers.

Section 1. Definitions. (1) "School district Medicaid recipient" means one who has been determined eligible for Medicaid-covered benefits provided by a local school district participating in the Medicaid Program.

(2) "School district Medicaid provider" means a local school district who has entered into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to receive Medicaid reimbursement for health-related services provided by the district.

Section 2. School District Medicaid Provider Agreements. (1) Pursuant to KRS 605.115, the Department of Education shall enter into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to provide reimbursement upon request to local districts for Medicaid covered benefits provided to eligible students.

(2) Local school districts may enter into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to become eligible to receive Medicaid reimbursement for Medicaid covered services provided to eligible students pursuant to KRS 605.115. Local school districts which choose to participate shall be required to comply with provider participation criteria set forth in 907 KAR 1:715 promulgated by the Department for Medicaid Services, Cabinet for Human Resources.

Section 3. Administrative Guidelines. (1) To receive federal Medicaid reimbursement, local school districts shall provide the state's share of the Medicaid expenditure and shall be required to document and certify the expenditure of state funds for Medicaid reimbursable services provided to Medicaid eligible student recipients. This certification of the availability and expenditure of state funds shall be provided as needed to the Department for Medicaid Services by local school districts for verification of state matching funds entitling the local school district to reimbursement for specific Medicaid reimbursable services provided by the school district. Certification shall include a statement on the Medicaid claim form or a signed statement from the local school district superintendent or finance officer. The Department of Education and the Department for Medicaid Services, Cabinet for Human Resources, may examine any records, files, or documents necessary to verify expenditures for Medicaid covered services for which certification of state matching funds has been made.

(2) Documentation of available or expended state matching dollars to the Department for Medicaid Services, Cabinet for Human Resources, shall be provided as required by the Department for

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Medicaid Services and may include the following:

(a) Records relating to time and attendance of service providers; cr

(b) Records of expenditures including invoices, related to the services provided by or through the local school district.

(3) Federal funds shall not be used by school districts to match Medicaid funds.

(4) Local school districts shall include in the annual audit an accounting of revenues and expenditures relative to serving Medicaid eligible student recipients. The Department of Education shall provide the Cabinet for Human Resources a copy of this annual audit.

(5) The Department for Medicaid Services, Cabinet for Human Resources, the Health Care Financing Administration of Health and Human Services, the Office of Inspector or their designated representatives may audit a local school district to verify compliance with all federal and state Medicaid statutes and administrative regulations relating to local school district receipt of Medicaid reimbursement for approved services.

Section 4. Parent/Guardian Consent. (1) Local school districts shall obtain written parent or guardian consent pursuant to the requirements of the Individuals with Disabilities Education Act regulations (34 CFR 300) [(20 USC Chapter 33)] prior to provision of services in an Individual Education Program (IEP).

(2)(a) Parents or guardians shall be given prior written notification on an annual basis that the local school district may be submitting [written consent shall also be obtained by the school district on an annual basis for submission of] claims for Medicaid reimbursement of health related services provided to students with educational disabilities as required by the student's IEP.

(b) The rights of the parent or guardian under IDEA shall not be affected in any way as a result of the local school district's participation in the Medicaid Program.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 6, 1995

FILED WITH LRC: October 11, 1995 at 10 a.m.

LABOR CABINET
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:170. Filing of claims information with the Department of Workers' Claims.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.039

NECESSITY AND FUNCTION: KRS 342.039 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC).

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims appointed pursuant to

KRS 342.228.

(2) "Data collection agent" means a business or entity that keys information in ~~to~~ an electronic format and transmits the resulting data to a ~~the~~ value added network used by the Department of Workers' Claims.

(3) "Insurance company" means an insurer or where applicable, the Kentucky Insurance Guaranty Association.

(4) "Value added network" means a business or entity that accepts electronic data transmissions and sorts the transmissions for delivery to various addressees.

Section 2. Reporting Requirements. (1) Beginning January 1, 1996, each insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator) shall file the information required on the Form IA-1 with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format, as soon as practicable and not later than three (3) weeks from the date on which an employee has reported a work-related injury or occupational disease to the employer.

(2) Beginning January 1, 1996, each insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator) shall file the information required on the Form IA-2 with a data collection agent or a value added network designated by the Department of Workers' Claims [value added network], in electronic format, every sixty (60) days for as long as the disability of an employee continues and whenever payments to an employee are commenced, terminated, changed, or resumed.

(3) Beginning January 1, 1996, each insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator) shall file a medical report containing the information extracted from the standardized uniform health claim forms prescribed by the Health Policy Board of the Commonwealth of Kentucky pursuant to KRS Chapter 216 and the administrative regulations promulgated pursuant thereto. This information shall be filed with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format, as soon as practicable and not later than three (3) weeks following the payment or denial of a bill submitted on a uniform health claim form in a workers' compensation case.

Section 3. Data Collection Agents. If an insurance company, group self-insurer (or its third-party administrator) or an individual self-insurer (or its third-party administrator) is unable to transmit the information required under this administrative regulation to a value added network utilized by the Department of Workers' Claims using its own facilities and resources, it shall employ a data collection agent capable of transmitting the information to a value added network utilized by the Department of Workers' Claims. The Department of Workers' Claims shall maintain a directory of businesses capable of providing this service that have asked to be listed as potential data collection agents.

Section 4. Forms. (1) Forms IA-1 and IA-2 are filed herewith and incorporated by reference.

(2) Obtaining forms.

(a) Forms are available to the public at main and branch office of the Department of Workers' Claims:

1. Frankfort - Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;
2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;
3. Paducah - 220 B. North 8th Street, Paducah, Kentucky 42001; and
4. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday inclusive, for this purpose.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: October 10, 1995

FILED WITH LRC: October 10, 1995 at 11 a.m.

CABINET FOR HUMAN RESOURCES

Office of Inspector General
(Amended After Hearing)

902 KAR 20:270. Mobile health services.

RELATES TO: KRS 216B.010 through 216B.131, 216B.990

STATUTORY AUTHORITY: KRS ~~[13A.100]~~ 216B.040, 216B.105

~~[, Executive Order 86-366]~~

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation of mobile health services.

Section 1. Definitions. (1) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(2) "Computed tomography (C.T.) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.

(3) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) ~~[(3)]~~ "License" means an authorization issued by the cabinet for the purpose of operating mobile health services.

~~[(4)]~~ "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(5) "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones. ~~["Qualified urologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and who otherwise meets criteria established by the mobile health service's governing authority.]~~

(6) "Magnetic resonance imaging (MRI)" means a diagnostic imaging modality which utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(7) "Qualified anesthesiologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and who otherwise meets the criteria established by the mobile health service's governing authority. ~~["Computed Tomography (C.T.) Scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.]~~

(8) "Qualified urologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and who otherwise meets criteria established by the mobile health service's governing authority. ~~["Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.]~~

(9) "Registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.

~~[(10)]~~ "Qualified anesthesiologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and who otherwise meets the criteria established by the mobile health service's governing authority.]

Section 2. Scope of Operation and Services. Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services, and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service, limited to the scope of the service's certificate of need.

(b) The licensee shall establish lines of authority and designate an administrator who will be principally responsible for the daily operation of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as the administrator of the service when it is being provided at the hospital where the designee is employed.

(2) Policies. There shall be written administrative policies which the service follows covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed in the storage, handling and administration of drugs and biologicals.

(3) Personnel.

(a) Medical director. The service shall have a medical director. The medical director shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical aspects of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate medical director may be designated from each hospital's medical staff to serve as the medical director of the service when it is being provided at the hospital where the physician is on staff. If a service operates only diagnostic examination equipment, and if the service is offered only to licensed hospitals, and if the employees of the service makes no medical assessment of the diagnostic patient data collected, then the service shall be exempt from the requirements of this paragraph.

(b) The service shall employ, or provide for through a written contractual agreement, sufficient number of qualified personnel to provide effective patient care and all other related services. The licensee shall provide written personnel policies which shall be available to all employees, reviewed on an annual basis, and revised as necessary. If the staff/patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination, tuberculin test, and other appropriate tests.

(e) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and social security number;
2. Evidence of current registration, certification or licensure of personnel;
3. Records of training and experience; and
4. Records of performance evaluation.

(4) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities including thorough job orientation for new employees.

(5) Medical records.

(a) The service shall maintain medical records which contain at least the following:

1. Medical and social history relevant to the service(s) provided, including data obtainable from other providers;
2. Names of referring physician, if any, and physician's orders for special diagnostic services such as x-ray or CT scans;
3. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment diagnosis, services provided, medications and treatments prescribed, and disposition made;
4. Reports of all physical examinations, laboratory, x-ray, and other test findings relevant to the service(s) provided; and
5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The service shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the service shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(e) A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.

(f) Provisions for storage of medical records in the event the mobile health service ceases to operate because of disaster, or for any other reason. The licensee shall safeguard the record and its content against loss, defacement and tampering.

Section 4. Vehicle Requirements. (1) All vehicles used in the provision of a health service, as provided by the service's certificate of need, shall be kept, in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to those vehicles which the patient enters.

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments.

(b) There shall be a minimum of two (2) potential power sources for the vehicle. To insure an immediately available source of power in the event of a power failure, one (1) must be self-contained on the vehicle. The other source must be an exterior source of power hookup.

(c) The vehicle shall be accessible to users with disabilities ~~(the handicapped)~~ either through the use of a wheelchair lift or a ramp which complies with applicable American National Standards Institute (ANSI) requirements.

(d) The vehicle shall have adequate and safe space for staff and examination procedures, as determined by the cabinet.

(e) Equipment. Vehicles used in the provision of a health service, as provided by the service's certificate of need, shall have the following essential equipment:

1. One (1) five (5) pound dry chemical fire extinguisher;
2. One (1) first aid kit;
3. Suction apparatus;
4. Oxygen equipment (portable) including:
 - a. One (1) "D" size oxygen cylinder;
 - b. One (1) pressure gauge and flow rate regulator;
 - c. Adaptor and tubing; and
 - d. Transparent masks for adults and children. Nasal cannulas may be substituted.

(f) Personnel. Each mobile health service vehicle shall at a minimum be staffed by one (1) person, who may also be the driver of the vehicle, who shall have the following qualifications:

1. Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association; or
2. EMT-first responder certification; or
3. EMT-A certification; or
4. Licensure as a registered nurse, physician or dentist.

Section 5. Provision of Services. A licensed mobile health service shall comply with the requirements listed in Sections 3, 4, and 6 of this administrative regulation, the service's program narrative, and the additional requirements of this section which relate to the particular service(s) offered by the licensee.

(1) Diagnostic services. Diagnostic services are those services which are performed to ascertain and assess an individual's physical health condition.

(a) Diagnostic services shall be performed only on the order of a physician except for mammography services.

(b) The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, the name of the person performing the procedure, the date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. Diagnostic imaging services are those services which produce an image, either through film or computer generated video, of the internal structures of a patient. These services include:

- a. X-ray;
- b. MRI;
- c. CT scanning;
- d. Ultrasound;
- e. Mammography;
- f. Fluoroscopy; and
- g. Xerography.

2. Any mobile health service which provides diagnostic imaging services shall comply with the following:

- a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;
- b. There shall be a written preventive maintenance program which the service follows to ensure that imaging equipment is operative,

properly calibrated, and shielded to protect the operator, patient, environment, and the integrity of the images produced;

c. Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes;

d. Imaging services shall have a current license or registration pursuant to applicable Kentucky statutes and any administrative regulations promulgated thereunder;

e. All personnel engaged in the operation of imaging equipment shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations;

f. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the imaging equipment;

g. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be exposed, and the number of images to be obtained and the views needed, and a statement concerning the condition of the patient which indicates why mobile imaging services are necessary; and

h. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation services in the event of a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services are those services which are provided through the use of diagnostic equipment, and physical examination. These services include:

- a. Electrocardiogram services;
- b. Electroencephalogram services;
- c. Holter Monitor services;
- d. Disability determination services;
- e. Pulmonary function services;
- f. Aphresis services;
- g. Blood gas analysis services;
- h. Echosonography services; and
- i. Doppler services.

2. Equipment used for direct patient care shall comply with the following:

a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

b. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations; and

c. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

3. Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations.

c. Personnel performing physical examinations shall be limited by the relevant scope of practice of Kentucky licensure.

(2) Treatment services. Treatment services are those services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of their maximum level of physical function.

(a) Mobile health clinic. A mobile health clinic is a health service providing both diagnostic and treatment services through the use of a mobile vehicle. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.

1. Policies. the licensee shall develop patient care policies with

the advice of a group of professional personnel that includes one (1) or more physicians and one (1) or more advanced registered nurse practitioners. At least one (1) member shall not be a member of the mobile health clinic staff. The policies shall include:

a. A description of the services the mobile health clinic provides directly and those provided through agreement;

b. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; and

c. Procedures for review and evaluation of the services provided by the clinic at least annually.

2. Personnel. The mobile health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

a. The physician shall:

(i) Be responsible for all medical aspects of the clinic and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

(ii) In conjunction with the advanced registered nurse practitioner(s), participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

(iii) Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

(iv) Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

b. The advanced registered nurse practitioner shall:

(i) Participate in the development, execution and periodic review of the written policies governing the services the mobile health clinic provides;

(ii) Participate with the physician in periodic review of patient health records;

(iii) Provide services in accordance with mobile health clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

i. Arrange for, or refer patients to needed services that may not ~~cannot~~ be provided at the mobile health clinic; and

ii. Assure that adequate patient health records are maintained and transferred when patients are referred.

3. The mobile health clinic shall have linkage agreements or arrangements with each of the following:

a. Inpatient hospital care;

b. Physician services in a hospital, patient's home, or long-term care facility;

c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;

d. Home health agency;

e. Emergency medical services;

f. Pharmacy services; and

g. Local health department.

4. The mobile health clinic shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

a. The utilization of clinic services including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed clinical records; and

c. The mobile health clinic's health care policies.

5. The mobile health clinic shall develop and maintain written protocols, i.e., standing orders, rules of practice, and medical directives, which apply to services provided by the clinic and which explicitly direct the step-by-step collection of subjective and objective

data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected, and include rationale for each decision made. The protocols shall be signed by the staff physician.

6. The mobile health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

7. The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

- a. Chemical examinations of urine by stick or tablet methods or both (including urine ketones);
- b. Microscopic examinations of urine sediment;
- c. Hemoglobin or hematocrit;
- d. Blood sugar;
- e. Gram stain;
- f. Examination of stool specimens for occult blood;
- g. Pregnancy tests;
- h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
- i. Test for pinworms.

8. The mobile health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

9. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, the clinic's next scheduled visit, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.

(b) Mobile dental clinic. A mobile dental clinic is a health service providing both diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist. These policies shall include:

- a. Guidelines which identify the dental problems which may not be performed in the mobile unit, and provisions for patient referral;
- b. Guidelines for the review and evaluation of the services provided by the clinic at least annually; and
- c. Guidelines for procedures to be followed in the event a patient has a medical emergency.

2. Personnel. The mobile dental clinic shall have a staff that includes at least one (1) licensed dentist and at least one (1) dental assistant.

a. The dentist shall:

- (i) Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and any administrative regulations promulgated thereunder;
- (ii) Be present in the clinic at all times that a patient is receiving dental care; and
- (iii) Provide direct supervision to all staff involved in the delivery of services.

b. The dental assistant shall:

- (i) Provide services in accordance with the mobile dental clinic policies and established protocols, KRS Chapter 313, and any administrative regulations promulgated thereunder; and
- (ii) Provide services only under the direct supervision of a licensed dentist.

3. Equipment. The mobile dental clinics shall have the following equipment:

- a. X-ray units;
- b. Sterilizer;
- c. High speed suction;
- d. Dental lights; and
- e. Emergency kit with the following drug types:
 - (i) Antiallergenic;
 - (ii) Vasodilators;
 - (iii) Anticonvulsives; and
 - (iv) Vasopressors.

(c) Mobile lithotripter service. A mobile lithotripter service is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.

1. Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.

2. Lithotripsy services shall be performed only on the order of a physician.

3. Lithotripsy services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, and the name of the person performing the procedure.

5. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be exposed, and the anticipated outcome of treatment.

6. Policies. A mobile lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) qualified urologist and one (1) qualified anesthetist. At least one (1) member shall not be a member of the mobile lithotripter service staff. The policies shall include:

- a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;
- b. Procedures to be followed in the event a patient has a medical emergency;
- c. Guidelines for the review and evaluation of the service on an annual basis; and
- d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

7. Personnel. The mobile lithotripter service shall employ at least one (1) lithotripter technician, and shall employ or make arrangements with the hospital utilizing the service for at least one (1) registered nurse, one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services, and (1) qualified anesthetist to be available for procedures requiring anesthesia;

8. Lithotripsy equipment used for direct patient care shall comply with the following:

- a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;
- b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, properly shielded, and safe for the patient, operator, and environment;
- c. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, certified or registered in accordance with applicable Kentucky statutes and administrative regulations; and
- d. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment; and
- e. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation in the event of a patient emergency.

(d) Other treatment services shall include in home intravenous (I.V.) therapy services.

1. Other treatment services shall be performed only on the order of a physician.

2. In home I.V. therapy services shall only be performed by a registered nurse.

3. ~~All in-home I.V. therapy services shall have a written agreement with a licensed home health agency outlining the responsibilities of both parties.~~

4-] All services provided shall be under the supervision of a licensed physician ~~[who may be associated with the home health agency].~~

4. ~~[5-]~~ Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s). At least one (1) member shall not be a member of the service's staff. The policies shall include:

a. A description of the services provided; ~~[-]~~

b. A requirement for a written common plan of treatment with other service providers, and immediate verbal communication between providers of revisions in the common plan shall be documented in the plan of treatment;

c. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; ~~[and]~~

d. ~~[-]~~ Procedures for review and evaluation of the services provided at least annually; ~~and~~

e. ~~[-]~~ Guidelines for patient and environmental assessment.

5. ~~[6-]~~ Personnel. The service shall have a staff that includes at least one (1) registered nurse. The service shall employ such other staff or ancillary personnel that are necessary and essential to the service's operation. The registered nurse shall:

a. Participate in the development, execution and periodic review of the written policies governing the services provided;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with established policies, protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(i) Arrange for, or refer patients to needed services that cannot be provided by the service; and

(ii) Assure that adequate patient health records are maintained and transferred when patients are referred.

6. In-service training programs shall include instruction in:

a. Use of equipment;

b. Side effects and precautions of drugs and biologicals; and

c. Infection control measures.

7. The service shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

a. The utilization of the service including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed records; and

c. The service's health care policies.

Section 6. Waste Processing. (1) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact into a rigid container. The rigid containers of sharp wastes shall either be incinerated or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(2) The mobile health service shall establish a written policy for the handling and disposal of all infectious pathological and contaminated waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

(a) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and

identifies the mobile health service from which the waste is being removed, shall be attached to the bag in a conspicuous manner.

(b) All unpreserved tissue specimens shall be incinerated off site.

(c) The following waste shall be sterilized before disposal or be disposed of by incineration if they are combustible:

1. Dressings and materials from open or contaminated wounds;

2. Waste materials and disposable linens from isolation rooms;

3. Culture plates;

4. Test tubes;

5. Sputum cups; and

6. Contaminated sponges and swabs.

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: October 3, 1995

FILED WITH LRC: October 5, 1995 at 9 a.m.

CABINET FOR HUMAN RESOURCES

Department for Social Services

(Amended After Hearing)

905 KAR 7:250. Kentucky Educational Collaborative for State Agency Children.

RELATES TO: KRS Chapters 158, 161, 605, 610, 630, 635, 640, 645

STATUTORY AUTHORITY: KRS 158.135, 194.050, 605.110

NECESSITY AND FUNCTION: KRS 605.110 requires that children maintained in a facility or program operated by the Cabinet for Human Resources shall so far as possible maintain a common school education. This administrative regulation sets forth policies for complying with KRS 158.135 and 605.110 in Department for Social Services (DSS), Division of Youth Services (DYS), residential, day treatment programs, and group homes; other programs operated, contracted, or financed through the Cabinet for Human Resources serving committed youth, private child caring agencies serving committed children and children, other than foster children, who are in placements financed through the Cabinet for Human Resources.

Section 1. Definitions. (1) "Cabinet for Human Resources programs" means both state-operated and state-contracted or financed programs.

(2) "Department" means the Department for Social Services (DSS), Cabinet for Human Resources.

(3) "Educational administrative staff" means a principal, assistant principal, supervisor, coordinator, director, pupil personnel worker or guidance counselor employed or contracted by the Kentucky Educational Collaborative for State Agency Children to provide educational services.

(4) "Head teacher" means the lead teacher, principal, or lead educator designated by the local district or by the Kentucky Educational Collaborative for State Agency Children (KECSAC) to be responsible for the operation of the daily education program. The program director may also be the head teacher in some facilities, if they have appropriate educational certification.

(5) "Individual education program (IEP)" means the instructional program required for state agency children identified as having educational disabilities as governed by 707 KAR 1:210.

(6) "Individual plan of instruction (IPI)" means the instructional plan required for state agency children not identified as having educational disabilities.

(7) "Individual treatment plan (ITP)" means a social and behavioral intervention plan, including the plan for educational instruction, that is developed for each state agency child being served by a treatment institution or facility.

(8) "Instructional calendar" means the yearly schedule of educational events, including instructional, recreational, and teacher

professional development days, holidays and noninstructional days.

(9) "KDE" means the Kentucky Department of Education.

(10) "KECSAC" means the Kentucky Educational Collaborative for State Agency Children.

(11) "KERA" means Kentucky Education Reform Act.

(12) "Local school district" means the school district where state agency children are provided educational services.

(13) "On-site state agency school program" means a school program operated on the campus of a state residential facility or day treatment program. Other private facilities may apply to KECSAC for status as an on-site state agency school program.

(14) "Program director" means the administrator at a state-operated or contracted institution or day treatment facility or administrator of a private child care agency that is responsible for the safety and security of youth and staff and the operation of the treatment facility.

(15) "Private child care agency" means a private, not state-operated program, which provides care or treatment for committed children on a per child contractual or financed basis.

(16) "SAEC" means State Agency Education Council that functions as the school based decision making body for state agency children at on-site state agency school programs.

(17) "School" means the site where the educational program for state agency children is provided.

(18) "State agency children" means those children of school age committed to or in the custody of the Cabinet for Human Resources and placed in a Cabinet for Human Resources operated or contracted institution, facility or day treatment program, or placed or financed through the Cabinet for Human Resources in a private facility pursuant to child care agreements other than those for foster care; and those children of school age in home and community based services provided as an alternative to intermediate care facility services for mentally retarded as governed by KRS 158.135(1)(a).

(19) "State agency children's fund" means appropriations to support KRS 158.135 previously known as out-of-district funds.

(20) "Treatment" means the total array of services utilized to produce a positive change in children served by the treatment facility.

Section 2. Governance. (1) An advisory board for the Kentucky Educational Collaborative for State Agency Children (KECSAC) composed of twelve (12) members appointed by the Governor shall provide recommendations in policy development. The advisory board shall meet at a minimum biannually.

(2) Contracting procedures.

(a) The department shall contract with a university training resource center for the establishment of the KECSAC. The KECSAC shall be responsible for the oversight or administration of state and federal education funding and the provision of educational services to state agency children. The KECSAC shall be financed by the state agency children's fund. The KECSAC shall have knowledge and experience in the following:

1. Kentucky Education Reform Act (KERA), and Kentucky's system of schools;

2. State and federal statutes pertaining to youth with educational disabilities, e.g. Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act;

3. Kentucky Unified Juvenile Code and the operation of agency programs for juvenile offenders, status offenders and dependent children; and

4. Research regarding the education of at-risk, incarcerated and difficult to motivate youth.

(b) KECSAC shall cooperatively plan programs and state agency children's fund budgets with the department, KDE, State Agency Education Councils (SAEC) and local school districts providing programs to state agency children. Local school districts shall be notified of projected funding levels by KECSAC by February, for the following school year.

(c) The KECSAC application to the department shall contain educational goals and objectives for the biennium for which funding is requested. The goals and objectives shall be consistent with KERA mandates, and the mandates of the Individuals with Disabilities Education Act. The educational goals and objectives shall be compatible with and complementary to the treatment goals for state agency children.

(d) The KECSAC with the cooperation of the department and KDE shall develop written procedures for the operation of the state-wide education system for state agency children.

(3) Staffing.

(a) Teachers and other educational staff shall be employed or contracted with through the local school district where the treatment facility is located.

1. If the local school district is not able or willing to provide the educational personnel for the state agency children's treatment facility, the KECSAC:

a. Shall be notified in writing no later than January 1 prior to the start of the school year;

b. May contract with another school district for educational staff; or

c. Contract to employ teachers or educational staff.

2. When filling a teacher vacancy in a state-operated or contracted facility the local school district or KECSAC shall provide the state agency program director an opportunity to interview prospective new teachers for the on-site state agency school program. The state agency program director shall provide the local school district with interview results regarding the applicants suitability for teaching in the on-site state agency school program.

(b) Educational administrative staff, supervisors and teachers employed or contracted by the KECSAC shall meet Kentucky education certification requirements and shall be annually evaluated. Educational staff employed by school districts shall be evaluated in accordance with local school district policy. The KECSAC shall develop procedures for evaluating staff employed directly by the KECSAC.

(c) Each on-site state agency school program shall designate a head teacher.

(d) Education staff directly employed by the KECSAC shall be compensated at rates at least commensurate with public school employees with comparable qualifications, experience and assignments in the school district where the treatment facility is located. Statewide KECSAC positions shall be compensated at rates comparable to the average of education positions with similar responsibilities, credentials and experience providing education to state agency children.

(e) On-site state agency children programs shall have a minimum of one (1) certified special education teacher on staff by the 1995-96 school year. The employment of special education certified teachers shall reach at least one-half (1/2) of the total instructional teachers (excluding Chapter I teachers) employed in each state agency program by the school year 1996-97. If the on-site state agency school program has children appropriately identified as having educational disabilities the teacher's certification shall be appropriate for the children served. Exceptions shall be made only with the agreement of the agency treatment facility, the local school district, the Division of Exceptional Children's Services in KDE and KECSAC.

(f) Other specific services identified in an IEP by the admission and release committee as needed for a youth with educational disabilities may be accessed by KECSAC contracting for appropriate services. The KECSAC shall comply with the administrative regulations relating to youth with disabilities as provided in 707 KAR Chapter 1.

(4) State Agency Education Council (SAEC). Pursuant to KERA requirements related to school-based decision making councils, state agency education programs may, upon a two-thirds (2/3) majority vote of the site's teachers, establish a state agency education council

through an agreement with the KECSAC and the local school district.

(5) Policy application. Interagency agreements shall be developed between each local school district and residential agency regarding their mutual responsibility for education and care of state agency children. If a conflict arises between the local agencies regarding the development or fulfillment of the interagency agreement by either party, it shall be resolved by the KECSAC.

(6) Student eligibility. If a specific activity (e.g., football, debate, etc.) is not provided to youth in a state or private contracted agency program, the youth shall not lose eligibility to participate based on the requirements in 702 KAR 7:070. Eligibility shall be figured on a month-to-month basis (e.g., nine (9) months in a DSS facility without a formal football program leaves nine (9) months of eligibility in a local school district). The eligibility period shall not exceed one (1) additional year. Other eligibility criteria however, shall be met by the youth.

Section 3. Finance. (1) The amount of funds generated by state agency children under the Support Education Excellence in Kentucky (SEEK) Program as specified in KRS 157.360 for the guaranteed SEEK base and adjustments shall be sent to the school district providing education for state agency children to be used pursuant to contracts negotiated with the KECSAC.

(2) Distribution of state agency children's funds shall be as follows:

(a) State agency children's funds shall be used to fund the contract for the KECSAC.

(b) State agency children's funds shall be used to provide the local school district portion of the calculated base SEEK funding per child for children in residential placements.

(c) State agency children's funds may be used for educational services which benefit state agency programs in a collective manner.

(d) State agency children's funds may be used as matching funds if the match shall increase the amount of funds available to educate state agency children.

(e) After paragraphs (a), (b), (c) and (d) of this subsection have been funded the remainder of the state agency children's fund appropriation shall be divided by the total number of state agency children to be educated. The resulting per pupil amount shall be allocated for each state agency child. A state agency child identified with a disability shall have a weighted allocation in accordance with the SEEK add-on for exceptional children as governed by 702 KAR 3:270.

(f) If the state agency children's fund is appropriated with separate funds designated for state-operated and private child care programs the funds shall be averaged separately.

(3) The KECSAC shall contract with local school districts where state agency programs are located. If KECSAC provides educational services to state agency children, the KDE shall annually deduct the SEEK base and adjustments for children in day treatment programs, or the SEEK base plus adjustments less the local portion for children in residential and group homes from the school district that chose not to provide services. This amount shall be used by the KECSAC to provide educational services to state agency children.

(4) The KECSAC shall be considered the same as a school district for the generation, application, distribution and accountability of state and federal funds, other than SEEK, available to educate on-site state agency school children.

(5) An annual contract or memorandum of agreement shall be negotiated between the KECSAC and each school district providing education to state agency children. Funds shall be audited annually. An itemized budget shall be part of the contract. State agency children's funds shall be based upon average daily membership (ADM). Each state agency children's program shall be assigned a biennium maximum rated capacity by the Cabinet for Human Resources which shall provide the basis for the generation of funds, identified in KRS 605.110, for the projected education budget.

(6) The State Agency Children's Fund as specified in KRS 158.135 shall be sent to the local school district from KDE upon approval the KECSAC and the Cabinet for Human Resources. Budgeting procedures utilized for the school year 1993-94 shall be utilized as part of the 1994-96 biennial plan for allocation of funds. By the 1996-1998 biennium, the KECSAC shall design and phase in an equitable system to distribute these funds.

(7) The KECSAC as part of the contract with each local school district shall ensure the development of a plan for professional development of certified staff. If the local school district has chosen not to provide the educational services to state agency children, the KECSAC with the State Agency Education Council, if established, shall develop and present to the KDE a plan for professional development.

(8) The KECSAC may submit to the KDE a master technology plan for on-site state agency children's programs. The KECSAC shall receive a direct allocation of technology funds which shall be matched by state agency children's funds.

(9) Pursuant to KRS 157.190, 157.110, and 160.330 the KECSAC staff shall, as part of the biennial budget plan, make a request to the Commissioner of KDE for the textbook needs of state agency children. The State Agency Educational Councils, if established, shall provide the KECSAC with projected textbook needs for the children in their specific state agency program.

(10) The KECSAC shall obtain information from the Kentucky Department of Education and the Workforce Development Cabinet regarding all discretionary and entitlement state, federal and miscellaneous funding opportunities available to local school districts and file applications or reports necessary to procure and use funds for the education of state agency children.

(11) If the Cabinet for Human Resources is opening or contracting for a new program or expanding an existing program for treatment services, the Cabinet for Human Resources shall notify KDE and KECSAC prior to the biennial budget submission regarding the projected number of youth to be educated in the new or expanded program. The education budget for the new program shall be based on rated capacity for the first year.

(12) The KECSAC shall submit an application for adult education services for youth age sixteen (16) years and above who are committed to the Cabinet for Human Resources and shall use funds received to provide adult basic education services to eligible youth. These funds shall not be used concurrently during the six (6) hour base school day funded by SEEK and state agency children's funds.

(13) If youth age sixteen (16) years through twenty (20) enter with or receive a GED while attending a state agency program as permitted by an agreement with adult education that youth may continue in the state agency program for further KERA mandated academic and vocational training and if so continue to generate SEEK funds if still working toward a high school diploma.

(14) By June 30, 1995 and annually thereafter, the Cabinet for Human Resources, Departments for Social Services and Mental Health and Mental Retardation and Medicaid, the Kentucky Department of Education, the Workforce Cabinet and other appropriate agencies shall develop an interagency agreement defining services and financial responsibilities of each state and local agency providing educational services for state agency children. The agreement shall include procedures for resolving interagency disputes.

Section 4. Operations. (1) School options for state agency children with an IEP shall be planned, when not restricted by treatment needs, using the least restrictive environment ~~[alternative continuum plan]~~ based on specific child needs. Additional days beyond the school year may take place either at the local public school or on the state agency program site. If the state agency child is not restricted to the treatment site for security purposes, the continuum from least restrictive to most restrictive alternatives are as follows:

(a) A program for state agency children may send all of its children to be educated in the local public school where children in the local public school district are assigned or where their IEP indicates placement.

(b) A program for state agency children may send some of its children to be educated in the local public school as in paragraph (a) of this subsection and have on-site state agency school option for other children.

(c) A program for state agency children may have an on-site state agency school for all children due to reasons necessary for the conditions of placement in the state agency program.

(2) Assessments.

(a) KECSAC shall develop procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas and utilize health data obtained in the state agency program in order to determine educational objectives for the individual education and treatment plans. Educational goals and objectives shall be consistent with goals specified in each youth's individual treatment plan.

(b) If the youth is suspected to have an educational disability as governed by 707 KAR 1:180 and 1:190 an assessment shall be administered, following required due process procedures.

(c) School psychologists may be employed or contracted by the KECSAC for purposes of identifying educational, psychological or behavioral problems.

(3) In school districts providing educational services, the KECSAC staff and local school district staff shall coordinate the completion of required individual education program ~~[plan]~~ pursuant to 707 KAR 1:180 and 1:190.

(4) Instructional services.

(a) The teacher pupil ratio for on-site state agency school programs serving state agency children shall be no more than ten (10) students to one (1) teacher without a classroom aide and fifteen (15) students to one (1) teacher with a classroom aide and ~~[or]~~ comply with 707 KAR 1:230 relating to students with educational disabilities.

(b) An individual plan of instruction shall be developed for state agency children with goals and objectives that relate to the education goals set out in KRS 158.6451. The individual plan of instruction shall be developed in coordination with the ITP. If a youth is determined to have an educational disability the IEP requirements as governed by 707 KAR Chapter 1 ~~[4:180]~~ shall apply.

(c) A 230 day school calendar year shall be in operation unless specified otherwise in the youth's IEP and ITP. The head teacher in consultation with the local school district and program director shall submit a 230 day school calendar to the KECSAC with the annual contract for services. The calendar shall specify instructional, professional development, holiday and vacation days for the school year beginning July 1 of the contract year.

(d) State agency children who are fourteen (14) years of age or older who do not have an identified educational disability with an IEP and who do not read at a sixth grade level as measured by a standardized achievement test, shall be provided developmental reading, listening and writing instruction.

(5) Accountability.

(a) State agency children shall have the same assessments administered as other public school youth in A-5 and A-6 schools as specified in 703 KAR 4:080. The average daily attendance data for day treatment programs and the results of the assessments shall be included in the accountability index of the last A-1 school the youth attended prior to admittance to a state agency program or the A-1 school the youth would have attended if the youth had remained in that local school district.

(b) State agency children shall develop portfolios consistent with the content requirements of the state's assessment program. A youth's portfolio shall be sent to the receiving school as part of the educational records when youth transition from the state agency

program.

(c) An accountability system shall be designed by the KECSAC for state agency school programs.

(d) State agency children's school programs shall be in compliance with accreditation standards of the American Correctional Association and the Correctional Educational Association, if appropriate and if consistent with the KECSAC mission and school goals set out in KRS 158.6451.

(6) Transition.

(a) The KECSAC shall develop transition procedures for state agency children moving from the state agency education program to the next instructional or vocational setting. The transition procedures shall address responsible staff, timelines, format of information to be transmitted, support systems necessary and follow-up schedules.

(b) The transition planning to post school settings shall comply with the transition plan and service requirements of Individuals with Disabilities Education Act (IDEA) for students with educational disabilities and 707 KAR 1:220.

(c) The KECSAC shall design and implement a system to collect school follow-up data.

(d) The last school or school district a state agency youth attends prior to placement in a state agency program shall be responsible for forwarding the educational records to the state agency program within five (5) school days of receipt of the request. Upon receipt of the school records, the state agency program shall notify the sending school district office of the pupil personnel director, that the child is now in school attendance and not a drop out.

(e) The head teacher shall insure that the educational records of state agency children be forwarded to the receiving school within five (5) school days following the release of the youth from the treatment facility.

PEGGY WALLACE, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: October 3, 1995

FILED WITH LRC: October 5, 1995 at 11 a.m.

COMPILER'S NOTE: The body of the following administrative regulation, 909 KAR 1:021, was not amended after hearing. However, the material incorporated by reference was amended due to oral and written comments received. A copy of this material may be obtained at the address provided in Section 1(2) of this administrative regulation.

**KENTUCKY HEALTH POLICY BOARD
(Amended After Hearing)**

909 KAR 1:021. State Health Plan.

RELATES TO: KRS 216B.010 to 216B.130

STATUTORY AUTHORITY: KRS 216B.015(19), 216.2905(2)(h)

NECESSITY AND FUNCTION: KRS 216B.015(19) requires the Kentucky Health Policy Board to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the board is given responsibility in KRS 216.2905(2)(h).

Section 1. Incorporation by Reference. (1) The 1996-1998 Kentucky State Health Plan is hereby incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday.

JACK B. HALL, Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 13, 1995

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board of
Specialists in Hearing Instruments
(Amendment)

40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

201 KAR 7:040. Examinations.

RELATES TO: KRS 334.060, 334.070, 334.080, 334.090, 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to clarify and delineate the procedures for administering examinations.

Section 1. The board or its designee shall administer a qualifying examination to all qualifying applicants in accordance with the following rules:

(1) Applicants for examination shall furnish two (2) forms of identification, one (1) of which contains a picture, before being allowed to sit for the examination.

(2) The examination shall consist of the following:

(a) The National Examination in Hearing instrument studies;
(b) State written examinations on laws and ethics, ear molds and acoustics; and

(c) state practical examinations on ear impressions, audiometric testing, and defective hearing instruments.

(3) A passing grade shall consist of a score of seventy (70) ~~seventy-five (75)~~ percent on each section. Candidates shall be required to retake only those portions of the examination on which they fail to achieve a passing score.

(4) A notification of examination results shall be issued by the board to each applicant taking the qualifying examination.

(5) An apprentice shall take the next qualifying examination held subsequent to one (1) year after the effective date of his apprentice permit.

(6) An applicant who fails to pass any section of the examination three (3) times shall be required to sit for all portions of the examination. The applicant may sit for the examination only after providing evidence of additional education and training as approved by the board.

RALEIGH JONES, M.D., Chairman

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1995, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky

Contact person: David Nicholas

(1) Type and number of entities affected: All persons attempting to become licensed as a hearing instrument specialist.

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

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

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

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

1. First year following implementation: All candidates for licensure must sit for the examination.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Exam scores are reported to the board from the exam service.

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 310 requires the board to set compensation by 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: Passing scores for the examination will now be more appropriate.

(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: Qualified individuals might be prohibited from practice without the change.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified persons.

GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(Amendment)

201 KAR 16:050. Continuing education.

RELATES TO: KRS 321.211(7)

STATUTORY AUTHORITY: KRS 321.211(7), 321.235

NECESSITY AND FUNCTION: Pursuant to KRS 321.211(7) the board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation sets forth those requirements concerning required continuing education hours relating to the practice of veterinary medicine.

Section 1. (1) Each veterinarian licensed by this board shall be required to annually complete fifteen (15) hours of continuing education to be eligible for renewal of his license. Of the required hours, at least ten (10) hours shall be directly related to the practice of veterinary medicine and no more than five (5) hours may be in related areas such as practice management. Each veterinary technician and veterinary technologist shall be required to annually complete six (6) hours of continuing education to be eligible for renewal of his license. The period during which continuing education shall be received shall be from October 1 of each year until September 30 of the following year. Those courses approved shall be:

(a) All scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine; and

(b) All programs approved by the board, not associated with the American Veterinary Medical Association and its suborganizations.

(2) Those programs shall impart knowledge directly relating to the practice of veterinary medicine to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research may assure expansive and comprehensive care to the public.

Section 2. Each veterinarian shall be responsible for securing necessary documentation to support proof of his attendance at a course and shall annually, on the form furnished by the board, list those courses attended by him. The board may require this documentation to be provided to the board.

Section 3. The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or extensions of time within which to fulfill the same or make the required reports. A written request for waiver or extension of time shall be submitted by the licensee and shall be accompanied by a verifying document signed by a licensed physician. Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year. In the event that the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for another extension.

Section 4. If a person, whose license has been terminated, applies to the board to be reinstated, he shall submit proof that he has completed fifteen (15) continuing education hours within the twelve (12) month period immediately preceding the date on which the application is submitted. He may request that he be allowed to have his license reinstated immediately, with the provision that he shall receive fifteen (15) continuing education hours within six (6) months of the date of reinstatement. He shall be responsible for meeting the requirements of Section 1 of this administrative regulation

in order to properly qualify for renewal of his license in the next licensure period.

JOHN R. MCCLURE, Board Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1995, at 9 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: All persons registered as veterinary technicians and veterinary technologists.

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

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

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

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

1. First year following implementation: All persons registered as veterinary technicians and veterinary technologists will be required to provide evidence of continuing education during the past twelve months.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Renewal forms of all persons registered as veterinary technicians and veterinary technologists will be reviewed for continuing education.

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

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

(b) Kentucky: Entire state.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 321 requires the board to register

veterinary technicians and veterinary technologists.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Persons registered as veterinary technicians and veterinary technologists will keep themselves better educated in their field.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Individuals without the proper education would hold themselves out to the public as veterinary technicians and veterinary technologists.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified persons.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
(Amendment)**

401 KAR 100:010. General administrative hearing practice provisions.

RELATES TO: KRS 146.200 to 146.360, 146.990, 151.182, 151.184, 151.297, 151.990, Chapter 223, Chapter 224

STATUTORY AUTHORITY: KRS Chapter 13A, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-470, 224.40-310

NECESSITY AND FUNCTION: KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings on violations of those chapters and administrative regulations promulgated pursuant thereto, and on orders and final determinations of the cabinet made under those chapters and the administrative regulations promulgated pursuant thereto. This administrative regulation establishes procedures for conducting those administrative hearings, and repeals 401 KAR 40:030 and 400 KAR 1:050, both relating to procedures for conducting administrative hearings.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection, including those administrative hearings pending at the time this administrative regulation becomes effective. This administrative regulation governs administrative hearings authorized by those chapters on violations of those chapters and administrative regulations promulgated pursuant thereto, and on orders and final determinations of the cabinet made under those chapters and the administrative regulations promulgated pursuant thereto.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. General Provisions for Conducting Administrative Hearings. (1)(a) Hearings generally. All administrative hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the secretary shall be binding against any party to the administrative hearing leading to the final order. A party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice and Section 2 of this administrative regulation. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 relating to service of process, computation of time and filing of documents, and 400 KAR 1:040 relating to administrative discovery shall apply to cases before the cabinet, consistent with KRS Chapters 146, 151, 223, and 224 and the administrative regulations promulgated pursuant thereto. The hearing officer shall permit any party to represent that party's interests, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.

(b) Evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under rules of evidence, evidence not admissible thereunder may be admitted, except where designated as confidential 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. Subject to these requirements, 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. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken by the hearing officer of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in 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 cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

(2) Hearing officer's duties. The hearing officer shall in the hearing officer's discretion:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Hold prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Take any other action authorized by this administrative regulation, KRS Chapters 146, 151, 223, 224 and the administrative regulations promulgated pursuant thereto; and

(i) Make or recommend decisions or reports in accordance with KRS Chapters 146, 151, 223, 224 and the administrative regulations promulgated pursuant thereto.

(3) Prehearing conference. A hearing officer may order a prehearing conference:

(a) To simplify and clarify issues;

(b) To receive stipulations and admissions;
(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(d) For any other purposes as may be appropriate, including but not limited to summary disposition of the case.

(4) Summary disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:

(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:

1. There is no disputed issue as to any material fact; and

2. The moving party is entitled to a summary disposition as a matter of law.

(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. The hearing officer shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

(5) Hearing officer's report.

(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified at the time of the granting of the extension. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record. The parties may file exceptions and responses to the exceptions as provided under KRS 151.184 and 224.10-440. There shall be no other or further submissions.

(b) The hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty recommended in the report.

(6) Secretary's order.

(a) The secretary shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 4. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representa-

tive of a party or interested person and Office of Administrative Hearings personnel involved or who may reasonably be expected to become involved in the decision making process of an administrative hearing, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Communications concerning case status or advice concerning compliance with procedural requirements are not prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing. Oral communications made in violation of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record. Written communications made in violation of this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(b) Sanctions. The hearing officer, who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why the offending party's claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking such sanctions against other offending persons as appropriate.

(2) Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 5. Service. (1) Documents required to be served, including administrative summonses, shall be served by one (1) of the following methods:

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar 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 cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place and manner of service. To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) Service may be made upon a person issued a permit or registration by the cabinet, upon a person specified as an operator in the permit or registration application, or upon a person certified by the cabinet or applying for certification, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit or registration application (at the address specified in the permit, at the permanent address for the permittee or operator specified in the permit or registration application, or at any new address that has been specified in writing by the permittee or operator), or the certified operator or the person

requesting certification (at the address specified in the certification, at the permanent address for the certified operator specified in the certification request, or at any new address that has been specified in writing by the operator).

(2) Service shall be effective upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the Office of Administrative Hearings must be served by the filing party on all other parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case. Service of any document relating to the proceeding shall be made upon the attorney of record in addition to any other service specifically required by law or by order of the cabinet.

(5) Service shall be made upon the cabinet by serving the commissioner of the Department of Law and shall be effective upon receipt by the Department of Law.

Section 6. Administrative Summons and Public Notice of Hearing. Upon receipt of an initiating document, the Office of Administrative Hearings shall promptly serve in accordance with 400 KAR 1:030 and Section 5 of this administrative regulation, a copy of the document upon all parties designated to be served along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. If appropriate and at the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and administrative regulations involved.

Section 7. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the Office of Administrative Hearings when the document is received and stamped by the office.

(2) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet will be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer. When an order of the secretary has become final, the hearing officer in his discretion may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party. The substitution of true copies of exhibits or any part may be required by the hearing officer in his discretion as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing before the Office of Administrative Hearings shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing. The successors of the person shall likewise promptly

inform the Office of Administrative Hearings of their interest in the matters and state their addresses and telephone numbers. If a person fails to furnish a record address and telephone number as required, that person will not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of Administrative Hearings employees will be at rates which cover the cost of staff time, machine use and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts will be at rates established by the contract.

Section 8. Time. (1) Computation of time for the initiation of an administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 446.030 and 400 KAR 1:030.

(2) The time for filing or serving any document may be extended by a hearing officer except for the time for filing a petition for an administrative hearing under KRS 151.182(2) or 224.10-420(2) or if an extension is contrary to law or administrative regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section 9. Subpoenas. The Office of Administrative Hearings shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings to be held before or at the taking of depositions to be held before other officers. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the Office of Administrative Hearings or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section 10. Location of Administrative Hearings. Administrative hearings shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed upon by the parties or authorized by KRS 224.40-310(5)(e).

Section 11. Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding. A petitioner shall set forth a statement setting forth the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or
2. Has an interest which is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection do not apply, the hearing officer shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;
2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
3. The ability of the petitioner to present relevant evidence and argument; and
4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or, if desired, in a limited capacity. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall

be at the discretion of the hearing officer.

(4) Consolidation. When proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Administrative Hearings Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing and may seek the remedies identified in subsection (2) of this section whenever:

1. It has reason to believe that a violation of KRS Chapters 146, 151, 223, 224, the administrative regulations promulgated pursuant thereto, or a permit, registration or certification condition has occurred or is occurring; or

2. The cabinet has reason to believe remedies should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek a combination of the following:

(a) Permit revocation, termination, denial, modification or suspension;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalties;

(d) A determination, where expressly authorized by statute, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) Cost recovery where expressly authorized by statute; or

(f) Any other relief to which it may be entitled by KRS Chapters 146, 151, 223, 224 or the administrative regulations promulgated pursuant thereto.

(3) Procedures for administrative hearings initiated by the cabinet.

(a) Filing of administrative complaint. Contents. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the Office of Administrative Hearings incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief; and

2. A request for specific relief.

(b) Answer or responsive pleading. The person named in an administrative complaint shall file with the Office of Administrative Hearings an answer or responsive pleading within thirty (30) days of service of the administrative complaint which shall contain:

1. A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; and

2. Any defenses to each claim for relief.

(c) Amendments. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The person named in the administrative complaint shall have ten (10) days from the filing of an administrative complaint amended as a matter of right or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend the administrative complaint, the time for an answer to be filed shall be set forth in the order granting the motion.

(4) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense. A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) In a proceeding where the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show

cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 13. Review of Cabinet Orders and Final Determinations.

(1) Who may file. A person who considers himself aggrieved by an order or final determination of the cabinet may file a petition for review of the order or final determination pursuant to this section. This section also applies to petitions for review of a draft permit for construction or expansion, when the expansion results in substantial additional capacity, a waste disposal facility, made pursuant to KRS 224.40-310(6).

(2) The petition for review shall be filed with the Office of Administrative Hearings within thirty (30) days after the petitioner has had actual notice of the order or final determination complained of, or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of petition. The petition for review shall contain:

(a) A statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief;

(d) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number; and

(e) Other relevant information.

(4) Answer or responsive pleading. The respondents shall file an answer or other responsive pleading within thirty (30) days of service of the petition specifically admitting or denying facts or alleged errors stated in the petition and setting forth any other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The respondents shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) days period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that the person has waived the right to an administrative hearing and dismissing the petition.

(9) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 14. Procedures for Abate or Alleviate Orders. (1) In general. If pursuant to KRS 224.10-410, the secretary issues an order to abate or alleviate, the cabinet shall provide the person to whom the order was issued an opportunity to be heard. The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

(2) Notice.

(a) Upon issuance of an order to abate or alleviate under the provisions of KRS 224.10-410, the secretary shall file with the Office of Administrative Hearings a copy of the order.

(b) Upon filing an order to abate or alleviate, the Office of Administrative Hearings shall issue an administrative summons pursuant to Section 6 of this administrative regulation and shall set the time and place for an administrative hearing to be held not more than ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(3) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with Section 3 of this administrative regulation. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

~~(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order to abate or alleviate. The person named in the order to abate or alleviate shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated or alleviated.~~

~~(6) Default. Upon notification by the person named in the order to abate or alleviate that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued.~~

~~(6) [(7)] Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order to abate or alleviate.~~

Section 15. Procedures for Orders for Remedy under KRS 151.297. (1) In general. If pursuant to KRS 151.297, the secretary issues an order for remedy, the cabinet shall provide the person to

whom the order was issued an opportunity to be heard. The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

(2) Notice.

(a) Upon issuance of an order for remedy under the provisions of KRS 151.297, the secretary shall file with the Office of Administrative Hearings a copy of the order.

(b) Upon filing an order for remedy, the Office of Administrative Hearings shall issue an administrative summons pursuant to Section 5 of this administrative regulation and shall set the time and place for an administrative hearing to be held not more than five (5) working days from the date the order for remedy was signed by the secretary.

(3) Response.

(a) The person named in the order for remedy shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 151.297.

(b) In lieu of a response, the person named in the order for remedy may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with Section 3 of this administrative regulation. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, or that the condition or activity has been discontinued, abated or alleviated.

(6) Default. Upon notification by the person named in the order for remedy that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order for remedy stands as issued.

(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order for remedy.

Section 16. Judicial Review, Effect, and Subsequent Proceedings.

(1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186 or 224.10-470 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. Whenever a matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report recommending procedures to be followed in order to comply with the court's order. The hearing officer will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

ADMINISTRATIVE REGISTER - 942

Section 17. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 12, 1995

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

PUBLIC HEARING: A public hearing to receive comments on this amended administrative regulation has been scheduled for Tuesday, November 28, 1995, 1:30 p.m., Eastern Time, at Training Room A & B, 14 Reilly Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Kathryn M. Hargraves in writing at the address noted below by November 23, 1995 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 wishing to be heard will be given an opportunity to comment on the amended administrative regulation. Persons testifying at the hearing are requested to provide the Commission a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Kathryn M. Hargraves no later than 4:30 p.m. on November 28, 1995. The Natural Resources and Environmental Protection Cabinet, Office of Legal Services does not discriminate on the basis of race, 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. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternative formats for printed materials, should be submitted to Kathryn M. Hargraves at the address below.

CONTACT PERSON: Kathryn M. Hargraves, Natural Resources and Environmental Protection Cabinet, Office of Legal Services, Fifth Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kathryn M. Hargraves

(1) Type and number of entities affected: This administrative regulation is being amended to cure a deficiency found by the Administrative Regulation Review Subcommittee, which determined that Section 14(5), which describes the burden of proof in hearings on orders to abate and alleviate, does not comply with KRS 224.10-410. The Department for Environmental Protection has deleted this subsection in its entirety so that the burden of proof will be governed by the authorizing statute itself, KRS 224.10-410. No impact on persons named in orders to abate or alleviate is expected, since this administrative regulation is consistent with existing statutory requirements, current administrative practice, and the Kentucky Rules of Civil Procedure.

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

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received, however no impact is expected.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received, however no impact is expected.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: The amendment of this administrative regulation does not create additional or more stringent

requirements as the amendment is consistent with existing statutory requirements, current administrative practice, and the Kentucky Rules of Civil Procedure.

2. Second and subsequent years: The amendment of this administrative regulation does not create additional or more stringent requirements as the amendment is consistent with existing statutory requirements, current administrative practice, and the Kentucky Rules of Civil Procedure.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings are expected.

2. Continuing costs or savings: None are expected.

3. Additional factors increasing or decreasing costs: None are expected.

(b) Reporting and paperwork requirements: The amendment of this administrative regulation does not create additional or more stringent requirements as the amendment is consistent with existing statutory requirements, current administrative practice, and the Kentucky Rules of Civil Procedure.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable, since the administrative regulation does not alter existing administrative practice.

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

(a) Geographical area in which administration regulation will be implemented: No public comments were received, however, this amendment is not expected to have any economic impact.

(b) Kentucky: No public comments were received, however, this amendment is not expected to have any economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet is deleting this subsection to cure the deficiency identified by the Administrative Regulation Review Subcommittee.

(8) Assessment of expected benefits of the administrative regulation. The amendment will cure the deficiency found by the Administrative Regulation Review Subcommittee.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendment is procedural in nature only and is not expected to have an effect on public health and environmental welfare except insofar as it improves the cabinet's administrative procedures.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If the deficiency is not cured, the administrative regulation will need further consideration by the General Assembly or it will sunset upon adjournment. This amendment will allow the administrative regulation to remain effective.

(c) If detrimental effect would result, explain detrimental effect: See (b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The amendment deletes a provision which was found in the statute, thus removing the duplication.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Tiering was not applied because this procedural requirement is established by statute.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. The cabinet's Department for Environmental Protection

administers under state statutes some programs that have federal counterparts administered by the U.S. Environmental Protection Agency (EPA). The federal statutes authorize EPA to approve state programs which are consistent with and no less stringent than the federal programs. However, none of the programs EPA has delegated to the cabinet require adjudicatory administrative hearings to have certain procedural requirements.

2. State compliance standards. The amendment to this administrative regulation establishes procedures for conducting adjudicatory administrative hearings on orders to abate and alleviate authorized by KRS Chapter 224 relating generally to environmental protection. The amendment is being made to correct a deficiency found by the Administrative Regulation Review Subcommittee relating to Section 14(5) which describes the burden of proof in hearings on orders to abate and alleviate.

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? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This amendment to the administrative regulation will affect local government if named in an order to abate or alleviate.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment to the administrative regulation relates to the actions of local governments regulated by the cabinet pursuant to its statutory mandates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: No impact on divisions of local government named in orders to abate and alleviate is expected, since this administrative regulation is consistent with existing statutory requirements, current administrative practice, and the Kentucky Rules of Civil Procedure.

DEPARTMENT OF CORRECTIONS (Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to promulgate [adopt, amend or rescind] administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. [These administrative regulations are in conformity with these provisions.]

Section 1. (1)(a) Kentucky State Reformatory policies and procedures [~~Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised~~] October 12, 1995 [1994], are incorporated by reference, [~~and shall be referred to as Kentucky State Reformatory Policies and Procedures.~~]

(b) ~~They may be inspected, copied, or obtained at~~ [~~Copies of the procedures may be obtained from~~] the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [~~or may be reviewed at the Office of General Counsel weekdays from~~]

(2) Kentucky State Reformatory policies and procedures include:

KSR 01-00-09	Public Information and News Media Relations <u>(Amended 10/12/95)</u>
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution <u>(Amended 10/12/95)</u>
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File <u>(Amended 10/12/95)</u>
KSR 06-00-02	Records Audit (Deleted 10/12/95)]
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information <u>(Amended 10/12/95)</u>
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout)
KSR 07-00-09	Inventory Control of Underground Storage Tanks
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery or Death
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure Limited Issue
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-00-10	Segregation - Special Management Inmate Legal Access
KSR 10-00-11	Unit D - Behavior Problem Control
KSR 10-01-13	Unit D - Property Room Access

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KSR 10-01-01	Segregation Unit - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation	KSR 15-00-08	tee Procedures
KSR 10-01-02	Segregation - General Operational Procedures	KSR 15-00-09	Firehouse Living Area
KSR 10-01-03	Segregation - Inmate Tracking System and Records System		Smoking and No Smoking Areas for Inmates and Staff
KSR 10-01-04	Segregation - Administrative Segregation	KSR 15-00-10	Program Services for Special Housing Placement [(Amended 10/12/94)]
KSR 10-01-05	Segregation - Disciplinary Segregation	KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 10-01-06	Segregation - Protective Custody	KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures [(Amended 10/12/94)]
KSR 10-01-07	Segregation - Convalescent Care Unit		Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations [(Amended 10/12/94)]
KSR 10-01-08	Unit D - Safekeepers and Pretrial Contract Hold Status Inmates	KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application [(Amended 10/12/94)]
KSR 10-01-09	Unit D - Hold Ticket Residents	KSR 15-01-04	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services [(Amended 10/12/94)]
KSR 10-01-11	Segregation Unit - Behavior Problem Control		Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations [(Amended 10/12/94)]
KSR 10-01-13	Segregation Unit - Property Room Access	KSR 15-01-05	Inmate Correspondence and Mailroom Operations <u>(Amended 10/12/95)</u>
KSR 10-02-01	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance	KSR 16-00-02	Inmate Access to Telephones
KSR 10-02-02	Unit E Designated Staff Visits	KSR 16-00-03	Visiting Regulations
KSR 10-02-03	Unit E-1 Convalescent Care	KSR 16-01-01	Lawn Visit Procedure and Regulations
KSR 10-02-04	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: General Operating Procedures	KSR 16-01-02	Night Visit Regulations
KSR 11-00-01	Meal Planning for the General Population	KSR 16-01-03	Assessment and Orientation, Consent Decree Notification to Inmates [(Added 10/12/94)]
KSR 11-00-02	Special Diets	KSR 17-00-05	Inmate Personal Property
KSR 11-00-03	Food Service Inspections	KSR 17-00-07	Repair of Inmate Owned Appliances by Outside Dealers
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates	KSR 17-00-08	Intratransfers, Identification Department, Departure - Admission and Discharge [(Added 10/12/94)]
KSR 11-00-06	Health Standards/Regulations for Food Service Employees	KSR 18-00-04	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill Classification [(Amended 10/12/94)]
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates	KSR 18-00-05	Kentucky State Reformatory Placement Committee
KSR 12-00-01	Inmate Summer Dress Regulations	KSR 18-00-06	Inmate Work Incentives
KSR 12-00-03	State Items Issued to Inmates	KSR 18-00-07	On-the-job Training Program
KSR 12-00-05	Sanitation Policy and Standards [(Added 10/12/94)]	KSR 19-00-01	Safety Inspections of Inmate Work Assignment Locations
KSR 12-00-07	Regulations for Inmate Barbershop	KSR 19-00-02	Technical and Adult Basic Level Learning Center Programs
KSR 12-00-09	Treatment of Inmates with Body Lice	KSR 19-00-03	Criteria for Participation in A College Program
KSR 13-00-02	Hospital Operations, Rules and Regulations	KSR 20-00-01	English as a Second Language
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds	KSR 20-00-04	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 13-00-04	Medical and Dental Care	KSR 20-00-06	Inmate Library Services
KSR 13-00-05	Medical Records	KSR 21-00-01	Library Services for Unit D
KSR 13-00-08	Institutional Laboratory Procedures	KSR 21-00-02	Inmate Organizations
KSR 13-00-09	Institutional Pharmacy Procedures	KSR 21-00-03	Inmate Magazine
KSR 13-00-10	Requirements for Medical Personnel	KSR 22-00-03	Privilege Trips
KSR 13-00-11	Health Evaluation	KSR 22-00-07	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 13-00-12	Vision Care/Optomety Services	KSR 22-00-08	Religious Programming
KSR 13-00-14	Periodic Health Examinations for Inmates	KSR 23-00-02	Substance Abuse and Chemical Dependency Program <u>(Added 10/12/95)</u>
KSR 13-00-15	Medical Alert System	KSR 23-00-03	Discharge of Inmates to Hospital or Nursing Home
KSR 13-00-16	Suicide Prevention and Intervention Program	KSR 24-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 13-00-17	Special Care	KSR 25-00-01	Preparole Progress Report
KSR 13-02-01	Mental Health Services	KSR 25-00-02	Volunteer Services Program <u>(Added 10/12/95)</u>
KSR 13-02-02	Mentally Retarded Inmates	KSR 25-00-03	
KSR 13-02-03	Suicide Prevention and Intervention Program	KSR 26-00-01	
KSR 13-02-04	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Program Description		
KSR 13-02-05	Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health		
KSR 14-00-01	Inmate Rights [(Amended 10/12/94)]		
KSR 14-00-02	Americans with Disabilities Act Inmate Program Access <u>(Added 10/12/95)</u>		
KSR 14-00-04	Inmate Grievance Procedure <u>(Amended 10/12/95)</u>		
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)		
KSR 15-00-06	Inmate I.D. Cards		
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Commit-		

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JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 22, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Clark Taylor

(1) Type and number of entities affected: 532 employees of the correctional institutions, 1408 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

N/A

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

(a) Necessity of proposed administrative regulation if in conflict:

N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner [secretary] to promulgate [adopt, amend or rescind] administrative regulations necessary and suitable for the proper administration of the department [cabinet] or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. [These administrative regulations are in conformity with these provisions.]

Section 1. (1)(a) Kentucky State Penitentiary [Pursuant to the authority vested in the Department of Corrections, the following] policies and procedures, October 12, 1995 [revised February 14, 1995] are incorporated by reference, [and shall be referred to as Kentucky State Penitentiary Policies and Procedures.]

(b) They may be inspected, copied, or obtained at [Copies of the procedures may be obtained from] the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, [or may be reviewed at the Office of General Counsel weekdays from] 8 a.m. to 4:30 p.m.

(2) Kentucky State Penitentiary policies and procedures include:

KSP 000000-06	Administrative Regulations
KSP 01-02-01	Public Information and Media Communications
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment
KSP 02-12-01	Inmate Personal Funds
KSP 05-02-01	Management Information System
KSP 06-01-01	Inmate Records <u>(Amended 10/12/95)</u>
[KSP 090000-01]	Inmate Work Programs/Safety Inspections of Inmate Work Locations (Deleted 10/12/95)]
KSP 09-08-01	Searches and Preservation of Evidence
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release
KSP 10-02-05	Special Security Unit
KSP 10-04-01	Special Needs Inmates
KSP 100000-03	Disposition of Unauthorized Property
[KSP 100000-05]	Procedures for Providing Clothing, Linens and Other Personal Items (Deleted 10/12/95)]
KSP 100000-08	Behavioral Counseling Record
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 11-03-01	Therapeutic Diets
KSP 11-06-01	Food Service Inspections
[KSP 110000-12]	Unit Classification Committee - Inmate Work Assignments (Deleted 10/12/95)]
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
[KSP 110000-18]	Functions of the Classification Committee (Deleted 10/12/95)]
[KSP 120000-08]	Inmate Furloughs (Deleted 10/12/95)]
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 13-01-01	Pharmacy Procedures

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KSP 13-02-01	Hospital Services
KSP 13-02-02	Sick Call
KSP 13-02-03	Health Evaluations
KSP 13-02-04	Emergency Medical Procedure
KSP 13-02-05	Consultations
KSP 13-02-08	Medical Records <u>(Amended 10/12/95)</u>
KSP 13-02-09	Psychiatric and Psychological Services <u>(Amended 10/12/95)</u>
KSP 13-02-11	Psychological/Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 130000-10	Execution Plan
KSP 14-03-01	Marriage of Inmates
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Due Process/Disciplinary Procedures
KSP 15-10-01	Discharge of Inmates by Shock Probation
KSP 16-01-01	Visiting Program
KSP 16-02-01	Inmate Correspondence
KSP 16-03-02	Inmate Telephone Access <u>(Amended 2/14/95)</u>
KSP 16-04-01	Inmate Packages
KSP 17-01-01	Inmate Personal Property
KSP 17-01-03	<u>Procedures for Providing Clothing, Linens and Other Personal Items (Amended 10/12/95) (Renumbered from 100000-05)</u>
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control
KSP 18-01-01	General Guidelines and Functions of the Classification Document <u>(Amended 2/14/95) (Renumbered from 110000-06)</u>
KSP 18-01-02	<u>Functions of the Classification Committee (Amended 10/12/95) (Renumbered from 110000-18)</u>
KSP 18-06-01	Classification Document <u>(Amended 2/14/95) (Renumbered from 110000-13)</u>
KSP 18-10-01	Preparole Progress Report <u>(Amended 2/14/95) (Renumbered from 110000-04)</u>
KSP 18-15-01	Protective Custody Unit
KSP 19-04-01	<u>Inmate Work Programs: Safety Inspections of Inmate Work Locations (Amended 10/12/95) (Renumbered from 090000-01)</u>
KSP 19-04-02	<u>Unit Classification Committee: Inmate Work Assignments (Amended 10/12/95) Renumbered from 110000-12)</u>
KSP 19-05-01	Correctional Industries <u>(Amended 10/12/95)</u>
KSP 20-04-01	Educational Programs
KSP 22-04-01	Arts and Crafts Program
KSP 25-04-01	<u>Inmate Furloughs (Amended 10/12/95) (Renumbered from 120000-08)</u>
KSP 25-08-01	<u>Extended Furloughs (Amended 2/14/95) (Renumbered from 120000-34)</u>

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 22, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Susan Alley

(1) Type and number of entities affected: 313 employees of the correctional institutions, 794 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470,

439.590, and 439.640 authorize the commissioner to promulgate ~~[adopt, amend or rescind]~~ administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. ~~[These administrative regulations are in conformity with these provisions.]~~

Section 1. (1)(a) Frankfort Career Development Center policies and procedures, October 12, 1995, [Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised June 14, 1994,] are incorporated by reference, [and shall be referred to as Frankfort Career Development Center Policies and Procedures.]

(2) They may be inspected, copied, or obtained at [Copies of the procedures may be obtained from] the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, [or may be reviewed at the Office of General Counsel weekdays from] 8 a.m. to 4:30 p.m.

(2) Frankfort Career Development Center policies and procedures include:

FCDC 01-04-01 Confidentiality of Information Roles and Services of Consultant, Contract Personnel, Governmental Services Supervisors and Volunteers
~~[FCDC 01-05-01 Duties and Responsibilities of FCDC Duty Officer (Deleted 10/12/95)]~~
 FCDC 01-09-01 Organization and Assignment of Responsibilities (Amended 10/12/95)
 FCDC 02-02-01 Inventory of Nonexpendable Personal Property
 FCDC 02-09-01 Inmate Account Draw and Savings Deposit Transactions Between Inmates
 FCDC 02-10-01 Fiscal Management and Control
 FCDC 02-11-01 Fiscal Management: Accounting Procedures
 FCDC 02-12-01 Fiscal Management: Checking Accounts
 FCDC 02-13-01 Purchasing and Receiving
 FCDC 06-02-01 Inmate Records
 FCDC 08-01-01 Fire Safety Practices (Amended 10/12/95)
 FCDC 09-01-02 Institutional Entry and Exit Surveillance and Perimeter Security Procedures (Amended 10/12/95)
 FCDC 09-03-01 Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials
 FCDC 09-06-08 Searches and Contraband Control
 FCDC 11-03-01 Food Service
FCDC 11-04-02 Menu, Nutrition and Special Diets (Added 10/12/95)
FCDC 11-06-01 Inspection and Sanitation (Added 10/12/95)
FCDC 11-07-01 Purchasing and Storage of Food Products (Added 10/12/95)
 FCDC 12-03-01 Laundry, Clothing, Hygiene and Grooming Services ~~[(Amended 6/14/94)]~~
 FCDC 12-04-01 Sanitation Practices and Inspections
 FCDC 13-01-01 Use of Pharmaceutical Products
 FCDC 13-01-02 Medical Emergencies
 FCDC 13-01-03 Informed Consent
 FCDC 13-02-01 Inmate Medical Screenings and Health Evaluations
 FCDC 13-03-01 Psychiatric and Psychological Services
 FCDC 13-03-02 Parental Administration of Medications and Use of Psychotropic Drugs
 FCDC 13-05-01 Family Notification: Serious Illness, Injury, Major Surgery or Death
 FCDC 13-06-01 Chronic and Convalescent Care
 FCDC 13-08-01 Sick Call/Physician's Weekly Clinic
 FCDC 13-09-01 Management of Serious and Infectious Diseases
 FCDC 13-10-01 Treatment Protocol Regarding First-Aid Procedures, Routine Health Care
 FCDC 13-11-01 Health Education: Provision of Special Health Care

Needs

FCDC 13-13-01 Physicians Referrals
 FCDC 13-14-01 Health Records
 FCDC 13-15-01 Routine and Emergency Dental Appointments
 FCDC 13-16-01 Routine and Emergency Eye Examinations
 FCDC 13-17-01 Inmate Death
 FCDC 14-01-01 Prohibiting Inmate Authority Over Other Inmates
 FCDC 14-02-01 Inmate Grievance System
 FCDC 14-03-01 Inmate Rights and Responsibilities (Amended 10/12/95) [e Shall Not Be Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap or Political Beliefs and Are Protected Against Corporal Punishment]
 FCDC 14-04-01 Legal Services Program
 FCDC 15-01-01 Good Time - Credits
 FCDC 15-03-01 Conduct of Adjustment Hearings (Chairperson)
 FCDC 15-04-01 Detention Orders and Protective Custody Requests
 FCDC 16-01-01 Visiting
 FCDC 16-02-01 Inmate Correspondence
 FCDC 16-03-01 Inmate Access to Telephones
 FCDC 16-04-01 Inmate Packages
 FCDC 17-01-01 Inmate Property Control (Amended 10/12/95)
FCDC 17-01-02 Authorized Inmate Personal Property (Added 10/12/95)
 FCDC 17-02-01 Inmate Reception, Orientation, and Discharge
 FCDC 18-01-01 Inmate Classification and Review
 FCDC 19-01-01 Security and Operation of the Governmental Services Program
 FCDC 19-02-01 Inmate Work Programs
 FCDC 20-01-01 Academic and Vocational Education
 FCDC 22-01-01 Privilege Trips
 FCDC 22-01-03 Shopping Trips
 FCDC 22-02-01 Recreation and Inmate Activities
 FCDC 22-02-03 Arts and Crafts Program
 FCDC 23-01-01 Religious Services
 FCDC 24-01-01 Social Services Program (Amended 10/12/95)
 FCDC 24-02-01 Substance Abuse Programs
 FCDC 25-01-01 Escorted Leaves
 FCDC 25-03-01 Release Preparation Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 22, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person:

(1) Type and number of entities affected: 43 employees of the correctional institutions, 180 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

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(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate [adopt, amend or rescind] administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. [administrative regulations are in conformity with these provisions.]

Section 1. (1)(a) Roederer Correctional Complex policies and procedures, October 12, 1995, [Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised January 12, 1995,] are incorporated by reference, [and shall be referred to as Roederer Correctional Complex Policies and Procedures.]

(2) They may be inspected, copied, or obtained at [Copies of the procedures may be obtained from] the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street,

Frankfort, Kentucky 40601, Monday through Friday, ~~[or may be reviewed at the Office of General Counsel weekdays from] 8 a.m. to 4:30 p.m.~~

(2) Roederer Correctional Complex policies and procedures include:

RCC 01-06-01	Inmate Access to and Communication with RCC Staff [(Amended 1/12/95)]
RCC 01-08-01	Public Information and News Media Access
RCC 01-09-01	Staff Participation in Professional Organization and Conferences; Provisions for Leave and Reimbursement for Expenses [(Amended 1/12/95)]
RCC 01-10-01	RCC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies <u>(Amended 10/12/95)</u>
RCC 02-01-01	Fiscal Management: Organization
RCC 02-01-02	Fiscal Management: Accounting Procedures [(Amended 1/12/95)]
RCC 02-01-03	Fiscal Management: Agency Funds [(Amended 1/12/95)]
RCC 02-01-04	Fiscal Management: Insurance
RCC 02-02-01	Fiscal Management: Budget [(Amended 1/12/95)]
RCC 02-02-02	Inmate Control of Personal Funds
RCC 02-02-03	Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
RCC 02-02-05	Inmate Canteen Services [(Amended 1/12/95)]
RCC 02-03-01	Fiscal Management: Audits [(Amended 1/12/95)]
RCC 02-04-01	Purchase Orders
RCC 02-04-02	Processing of Invoices [(Amended 1/12/95)]
RCC 02-06-01	Property Inventory [(Amended 1/12/95)]
RCC 04-01-01	Employee Training and Development <u>(Amended 10/12/95)</u>
RCC 04-01-02	First Aid and CPR Training [(Amended 1/12/95)] (Renumbered from 13-06-02)
RCC 06-01-01	Offender Records [(Amended 1/12/95)]
RCC 06-03-01	Records Release of Information
RCC 06-03-02	Storage of Expunged Records
RCC 06-03-04	Access to Psychological and Psychiatric Reports
RCC 06-04-01	Court Trips [(Amended 1/12/95)]
RCC 06-04-02	Receipt of Order of Appearance
RCC 08-01-01	Fire Prevention [(Amended 1/12/95)]
RCC 08-08-01	Control and Use of Flammable, Toxic, and Caustic Materials [(Amended 1/12/95)]
RCC 09-04-03	Duties and Responsibilities of the Fire Safety Officer [(Amended 1/12/95)]
RCC 09-06-01	Search Policy/Disposition of Contraband <u>(Amended 10/12/95)</u> [(Amended 1/12/95)]
RCC 10-01-02	Temporary Holding Cell Guidelines
RCC 11-01-01	Food Services: General Guidelines <u>(Amended 10/12/95)</u>
RCC 11-02-01	Food Service: Security
RCC 11-03-01	Dining Room Guidelines [(Amended 1/12/95)]
RCC 11-04-01	Food Service: Meals
RCC 11-04-02	Food Service: Menu, Nutrition and Special Diets
RCC 11-05-02	Medical Screening of Food Handlers
RCC 11-06-01	Food Service: Inspections and Sanitation
RCC 11-07-01	Food Service: Purchasing, Storage and Farm Products
RCC 12-01-01	Sanitation, Living Conditions Standards, Clothing Issues
RCC 12-01-02	Bed Areas [(Amended 1/12/95)]
RCC 12-01-03	General Guidelines for Living Units
RCC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
RCC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule

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RCC 12-03-02 Barber Shop Services and Equipment Control
 RCC 12-04-01 Institutional Inspections
 RCC 12-05-02 Use of Noncombustible Receptacle
 RCC 12-06-01 Insect and Vermin Control
 RCC 13-01-01 Organization of Health Services
 RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 10/12/95) ~~[(Amended 1/12/95)]~~
 RCC 13-03-01 Dental Procedures and Sick Call ~~[(Amended 1/12/95)]~~
 RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical ~~[(Amended 1/12/95)]~~
 RCC 13-05-02 Licensure and Training Standards for Medical Department
 RCC 13-06-01 Suicide Prevention and Intervention Program ~~[(Amended 1/12/95)]~~
 RCC 13-06-03 Emergency Medical and Dental Care Services ~~[(Amended 1/12/95)]~~
 RCC 13-06-04 First Aid/CPR Training Program
 RCC 13-07-01 Health Records ~~[(Amended 1/12/95)]~~
 RCC 13-07-03 Use of Pharmaceutical Products ~~[(Amended 1/12/95)]~~
RCC 13-07-04 Self-administered Medication Program (Added 10/12/95)
 RCC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
 RCC 13-10-01 Health Education/Special Health Programs
 RCC 13-11-01 Informed Consent
 RCC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
 RCC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
 RCC 13-13-01 Identification of Special Needs Inmates
 RCC 13-15-01 Medical Restraints
 RCC 13-16-01 Specialized Health Services
 RCC 13-17-01 Vision Care and Optometry Services
 RCC 13-18-01 Infection Control
 RCC 14-01-01 Inmate Rights and Responsibilities
 RCC 16-01-01 Inmate Visiting (Amended 10/12/95)
RCC 16-01-03 Extended and Special Visits (Added 10/12/95)
 RCC 16-02-01 Telephone Communications
 RCC 16-03-01 Mail Regulations
 RCC 17-01-01 Assessment/Orientation Procedure for Intrasystem Transfers
 RCC 17-03-01 Inmate Personal Property and Property Control (Amended 10/12/95)
 RCC 17-05-02 Housing Unit Assignment Assessment/Classification Center
 RCC 17-05-03 Notifying Inmate's Families of Admission and Procedures for Mail and Visiting ~~[(Amended 1/12/95)]~~
 RCC 17-05-04 Assessment Center Operations Rules and Regulations
 RCC 17-05-05 Assessment Center Operations and Reception Programs
 RCC 18-01-01 Institutional Classification Committee
 RCC 19-01-01 Job Assignments (Amended 10/12/95) ~~[(Amended 1/12/95)]~~
 RCC 20-01-01 Academic Education Program ~~[(Amended 1/12/95)]~~
RCC 20-01-03 Vocational Horticulture Program (Added 10/12/95)
 RCC 21-01-01 Library Services ~~[(Amended 1/12/95)]~~
 RCC 22-01-01 Recreation and Inmate Activities ~~[(Amended 1/12/95)]~~
 RCC 22-03-01 Inmate Clubs and Organizations (Amended 10/12/95) ~~[(Amended 1/12/95)]~~
 RCC 23-01-01 Religious Services ~~[(Amended 1/12/95)]~~
 RCC 24-01-01 Social Services and Counseling Program ~~[(Amended 1/12/95)]~~

RCC 25-04-02 Parole Eligibility Dates
 RCC 25-05-01 Inmate Discharge Procedure (Amended 10/12/95) ~~[(Amended 1/12/95)]~~

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 22, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 177 employees of the correctional institutions, 657 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of

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the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association.

Section 1. (1)(a) "Blackburn Correctional Complex Policies and Procedures", October 12, 1995 [~~April 13, 1995~~], is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Blackburn Correctional Complex Policies and Procedures:

~~[BCC 01-05-01 Duty Officer and Acting Warden (Deleted 10/12/95)]~~

BCC 01-07-01 Extraordinary Occurrence Reports

BCC 01-09-01 Legal Assistance for Staff

BCC 01-11-01 Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies

BCC 01-13-01 Relationships with Public, Media, and Other Agencies (Amended 10/12/95)

BCC 01-13-02 Public Information and News Media Access (Added 10/12/95)

BCC 01-15-01 Internal Affairs Office

BCC 01-16-01 Tours of Blackburn Correctional Complex

BCC 01-19-01 Inmate Access to BCC Staff (Amended 10/12/95)

BCC 02-01-01 Inmate Canteen

BCC 02-02-01 Fiscal Responsibility

BCC 02-02-02 Fiscal Management: Accounting Procedures (Amended 10/12/95)

BCC 02-02-03 Fiscal Management: Checks

BCC 02-02-04 Fiscal Management: Budget (Amended 10/12/95)

BCC 02-02-05 Fiscal Management: Insurance

BCC 02-02-06 Fiscal Management: Audits

BCC 02-04-01 Billing Method for Health Services Staff Paid by Personal Service Contract

BCC 02-05-01 Property Inventory (Amended 10/12/95)

BCC 02-06-01 Purchasing (Amended 10/12/95)

BCC 02-07-01 Inmate Personal Accounts (Amended 10/12/95)

BCC 04-02-01 Firearms Training (Amended 10/12/95)

BCC 04-03-01 Educational Assistance Program (Amended 10/12/95)

BCC 05-01-01 Inmate Participation in Authorized Research

~~[BCC 06-01-01 Storage of Expunged Records (Deleted 10/12/95)]~~

BCC 06-02-01 Records - Release of Information (Amended 10/12/95)

BCC 06-02-02 Offender Records (Amended 10/12/95)

BCC 06-03-01 Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board (Amended 10/12/95)

BCC 08-02-01 Natural Disaster Plan (Tornado) [~~Amended 4/13/95~~]

BCC 08-03-01 Emergency Preparedness Plan Manual [~~Amended 4/13/95~~]

BCC 08-04-01 Fire Safety Plan, Drills and Related Staff Duties [~~Amended 4/13/95~~]

BCC 08-04-02 Immediate Release of Inmates from Locked Areas

BCC 08-05-01 Duties of Fire Safety Officer [~~Amended 4/13/95~~]

BCC 08-06-01 Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 10/12/95)

BCC 08-07-01 Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers (Amended 10/12/95)

BCC 09-01-01 Inclement Weather/Emergency Condition Operation

BCC 09-02-01 Restricted Areas

BCC 09-02-02 Inmate Pass System to Restricted Areas

BCC 09-02-03 Regulation of Inmate Movement

BCC 09-02-04 Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30)

BCC 09-03-01 Inmate Identification

BCC 09-04-02 Complex Entry & Exit

BCC 09-05-01 Key Control

BCC 09-06-02 Transportation to Courts

BCC 09-07-01 Drug Abuse and Intoxicants Testing

BCC 09-08-02 Use of Restraints

BCC 09-09-01 Population Counts and Count Documentation

BCC 09-10-03 Development of Institutional Post Orders

BCC 09-10-04 Governmental Services, Study Release Officer Post Orders

BCC 09-10-05 Unit A-1 Post Orders

BCC 09-10-06 Recreation Post Orders: Observation

BCC 09-10-07 Entrance Gate Post Orders

BCC 09-10-08 Visiting Area Post Orders

BCC 09-10-09 Security Staff General Orders

BCC 09-10-10 Dining Room Officer Post Orders

BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment

BCC 09-13-01 Perimeter Patrol

BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates

BCC 09-15-01 Search Policy/Disposition of Contraband

BCC 09-16-01 Security Activity Logs

BCC 09-17-01 Institutional Supervisor Inspections

BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles

BCC 09-19-01 Duties and Responsibilities of the Institutional Captain

BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor

BCC 09-20-01 Inmate Death

BCC 09-21-01 Tool Control

BCC 09-22-01 Emergency Communication System

BCC 10-01-01 Special Management Inmates

BCC 10-01-02 Short-Term Administrative Segregation Holding Area (Amended 10/12/95)

BCC 11-01-01 Menu and Special Diets [~~Amended 4/13/95~~]

BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation [~~Amended 4/13/95~~]

BCC 11-03-01 Food Service: Meals

BCC 11-04-01 Dining Room Guidelines [~~Amended 4/13/95~~]

BCC 11-05-01 Food Service Security: Knife & Other Sharp Instrument and Utensil Control [~~Amended 4/13/95~~]

BCC 11-06-01 Purchasing, Storage and Farm Products [~~Amended 4/13/95~~]

BCC 11-07-01 Food Service Operations Manual

BCC 12-02-01 Personal Hygiene Items

BCC 12-02-02 Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities

BCC 12-05-01 Barber Shop Services (Amended 10/12/95)

BCC 12-06-01 BCC Housekeeping Plan

BCC 13-01-01 Sick Call and Pill Call (Amended 10/12/95)

BCC 13-02-01 Administration and Authority for Health Services

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(Amended 10/12/95)
 BCC 13-03-01 Provisions of Health Care Delivery
 BCC 13-04-01 Licensure and Training Standards
 BCC 13-05-01 Medical Alert System (Amended 10/12/95)
 BCC 13-06-01 Health Care Practices
 BCC 13-07-01 Emergency Medical Care Plan
 BCC 13-07-02 Emergency and Specialized Health Services
 BCC 13-07-03 Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
 BCC 13-08-01 Inmate Health Screening and Evaluation
 BCC 13-09-01 Prohibition on Medical Experimentation
 BCC 13-10-01 Dental Services (Amended 10/12/95)
 BCC 13-11-01 Suicide Prevention and Intervention Program (Amended 10/12/95)
 BCC 13-12-01 Use of Pharmaceutical Products (Amended 10/12/95)
 BCC 13-12-02 Parenteral Administration of Medications and Use of Psychotropic Drugs
 BCC 13-13-01 Inmate Health Education
 BCC 13-14-01 Management of Serious and Infectious Diseases
 BCC 13-15-01 Informed Consent
 BCC 13-16-01 Health Records
 BCC 13-17-01 Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
 BCC 13-19-01 Physicians Referrals/Continuity of Care
 BCC 13-20-01 Chronic and Convalescent Care
 BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers (Amended 10/12/95)
 BCC 13-23-01 First Aid Kits (Amended 10/12/95)
 BCC 14-01-01 Office of Public Advocacy Attorney Visits ((Amended 4/13/95))
 BCC 14-02-01 Law Library
 BCC 14-04-01 Inmate Rights and Responsibilities
 BCC 14-06-01 Legal and Support Services for Inmates ((Amended 4/13/95))
 BCC 15-02-02 Room Assignment
 BCC 15-03-01 Rules and Regulations for Dormitories (Amended 10/12/95)
 BCC 15-05-01 Extra Duty Assignments
 BCC 16-01-01 Inmate Furloughs
 BCC 16-02-01 Inmate Visiting ((Amended 4/13/95))
 BCC 16-03-02 Outgoing Inmate Packages
 BCC 16-03-03 Inmate Correspondence (Amended 10/12/95)
 BCC 17-02-01 Authorized Inmate Personal Property (Amended 5/12/94)
 BCC 17-03-01 Processing of New Inmates From Local Jails
 BCC 18-01-01 Classification: Institutional Classification and Reclassification (Amended 10/12/95)
 BCC 18-02-01 Racial Balance in Living Areas
 BCC 19-01-01 Inmate Work Programs (Amended 10/12/95)
 BCC 19-02-01 Classification of Inmates to Governmental Service Program
 BCC 19-03-01 Correctional Industries
 BCC 20-01-01 Academic and Vocational School
 BCC 20-02-01 College Programs (Deleted 10/12/95)
 BCC 20-04-01 Educational Program Evaluation (Amended 10/12/95)
 BCC 20-05-01 Educational Program Planning (Amended 10/12/95)
 BCC 20-06-01 Academic and Vocational Curriculum (Amended 10/12/95)
 BCC 21-01-01 Library Services (Amended 10/12/95)
 BCC 21-01-02 Audio or Video Tape Court Transcripts (Added 10/12/95)
 BCC 22-01-01 Arts and Crafts/Production and Sale of Items
 BCC 22-02-01 Privileged Trips
 BCC 22-03-01 Recreational Employees

BCC 22-04-01 Recreation and Inmate Activities
 BCC 22-04-02 Inmate Clubs and Organizations
 BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs
 BCC 22-04-04 Recreation Program Availability
 BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials
 BCC 22-06-01 Music Club
 BCC 22-08-01 Unit Recreation Program
 BCC 22-09-01 Use of Inmates in Recreation Programs
 BCC 23-01-01 Religious Services
 BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers
 BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to the Unit Director
 BCC 24-03-01 Social Services
 BCC 25-01-01 Inmate Check Out Procedure
 BCC 25-02-02 Temporary Release and Community Center Release
 BCC 25-05-01 Supplemental Parole Progress Reports
 BCC 26-01-01 Citizen Involvement and Volunteer Service Program (Amended 10/12/95)

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 22, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 92 employees of the correctional institutions, 403 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
(b) State whether a detrimental effect on environment and public health would result if not implemented: None

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. (1)(a) Western Kentucky Correctional Complex policies and procedures, October 12, 1995 [~~August 14, 1995~~], are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01 Public Information and Media Communication
WKCC 02-00-03 Invoice and Voucher Processing
WKCC 02-00-04 Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06 Purchasing Procedures
WKCC 02-01-01 Inmate Funds
WKCC 02-01-02 Inmate Canteen
WKCC 02-02-01 Agency Funds and Accounting Procedures
WKCC 02-08-01 Property Receipt and Inventory Procedures
WKCC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01 Employee Training and Development [~~(Amended 8/14/95)~~]
WKCC 04-04-01 Educational Assistance Program
WKCC 05-01-01 Research, Consultants, and Student Interns
WKCC 06-00-01 Offender Records and Information Access [~~(Amended 8/14/95)~~]
WKCC 06-00-02 Court Orders, Orders of Appearance, Warrants, Detainers, Etc.

WKCC 09-00-01 Drug Abuse and Alcohol Testing [~~(Amended 8/14/95)~~]
WKCC 10-02-01 Special Management Inmates
WKCC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03 Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04 Food Service Security
WKCC 11-00-05 Food Service General Guidelines
WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets (Amended 10/12/95)
WKCC 12-01-01 Inmate Clothing
WKCC 13-00-01 Special Health Programs
WKCC 13-01-01 Use of Pharmaceutical Products
WKCC 13-02-01 Health Care Services
WKCC 14-04-01 Legal Services Program [~~(Amended 8/14/95)~~]
WKCC 14-06-01 Inmate Grievance Procedure
WKCC 15-01-01 Hair and Grooming Standards (Amended 10/12/95)
WKCC 16-01-01 Visiting Policy and Procedures
WKCC 16-02-01 Inmate Correspondence
WKCC 16-03-01 Inmate Access to Telephones [~~(Amended 8/14/95)~~]
WKCC 16-04-01 Inmate Packages
WKCC 17-01-01 Inmate Personal Property
WKCC 17-02-01 Inmate Reception and Orientation
WKCC 18-01-01 Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01 Education Program
WKCC 22-00-01 Inmate Recreation and Leisure Time Activities
WKCC 22-00-02 Inmate Clubs and Organizations
WKCC 23-00-01 Religious Services
WKCC 25-02-01 Inmate Release Process [~~(Amended 8/14/95)~~]
WKCC 25-03-01 Prerelease Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 22, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 146 employees of the correctional institutions, 410+ inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

GRCC 02-01-03	<u>Fiscal Management Agency Funds (Added 10/12/95)</u>
GRCC 02-02-01	<u>Fiscal Management: Budget (Added 10/12/95)</u>
GRCC 02-03-01	<u>Fiscal Management: Audits (Added 10/12/95)</u>
GRCC 02-06-01	<u>Inmate Canteen (Added 10/12/95)</u>
GRCC 04-01-01	<u>Employee Training and Staff Development (Added 10/12/95)</u>
GRCC 05-01-01	<u>Information System</u>
GRCC 06-01-01	<u>Offender Records (Added 10/12/95)</u>
GRCC 10-01-01	<u>Special Management Unit</u>
GRCC 11-01-01	<u>Good Service Guidelines</u>
GRCC 11-02-01	<u>Food Service: Security</u>
GRCC 11-03-01	<u>Dining Room Guidelines</u>
GRCC 11-04-01	<u>Food Service: Meals</u>
GRCC 11-04-02	<u>Food Service: Menu, Nutrition and Special Diets</u>
GRCC 11-06-01	<u>Health Requirements of Food Handlers</u>
GRCC 11-07-01	<u>Food Service: Inspections and Sanitation</u>
GRCC 11-08-01	<u>Food Service Purchasing, Storage and Farm Products</u>
GRCC 14-01-01	<u>Inmate Rights and Responsibilities (Added 10/12/95)</u>
GRCC 14-02-01	<u>Legal Services Program (Added 10/12/95)</u>
GRCC 15-01-01	<u>GRCC Adjustment Program and Procedures (Added 10/12/95)</u>
GRCC 16-02-01	<u>Inmate Correspondence and Privilege Mail</u>
GRCC 16-03-01	<u>Inmate Telephone Communications</u>
GRCC 18-01-01	<u>Classification and Assessment</u>
GRCC 18-02-01	<u>Meritorious Housing</u>
GRCC 19-01-01	<u>Inmate Work Programs</u>
GRCC 20-01-01	<u>Educational Programs</u>
GRCC 21-01-01	<u>Library Services (Added 10/12/95)</u>
GRCC 22-01-01	<u>Recreation Programs (Added 10/12/95)</u>
GRCC 22-02-01	<u>Inmate Organizations (Added 10/12/95)</u>
GRCC 24-01-01	<u>Social Services and Counseling Program (Added 10/12/95)</u>

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. (1)(a) Green River Correctional Complex Policies and Procedures, October 12, 1995, [~~July 13, 1995~~] is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 01-05-01	Procedures Officer
GRCC 01-09-01	Duty Officer Responsibilities
GRCC 01-10-01	Smoking: GRCC Facility
GRCC 02-01-02	<u>Fiscal Management Accounting Procedures (Added 10/12/95)</u>

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for November 22, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Debra Judd

(1) Type and number of entities affected: 209 employees of the correctional institutions, 550 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

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- (b) Reporting and paperwork requirements: Policy revisions.
- (4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:005. Definitions.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:015. Qualifications.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.080

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 employment 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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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

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opportunity to comment on the proposed administrative regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing you may submit written comments on the proposed administrative regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:025. Disqualification.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

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,

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and of the right to appeal to the State Police Personnel Board.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:035. Application.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080

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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:045. Written examination.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

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.

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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:055. Oral interview.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

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.

(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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky

ADMINISTRATIVE REGISTER - 960

40601, (502) 695-6300.

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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:065. Background investigation.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080

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, the CBT, 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.

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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

ADMINISTRATIVE REGISTER - 961

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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:075. Register.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

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 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).

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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at

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Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 45:085. Medical examination.

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040, 16.080

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 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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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.

TRANSPORTATION CABINET Department of Highways Division of Right of Way and Utilities Division of Aeronautics (Amendment)

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

RELATES TO: KRS 56.610 to 56.760, 49 CFR Part 24

STATUTORY AUTHORITY: KRS 56.690, 174.080, 183.024, 49 CFR Part 24

NECESSITY AND FUNCTION: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet.

Section 1. Definitions. (1) "Advertising sign" means a billboard.

(2) "Average annual net earnings" means one-half (1/2) of the net earnings of the business or farm operation before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when it is determined by the Transportation Cabinet to be more equitable.

(3) "Business" means any lawful activity, except a farm operation, conducted:

(a) Primarily for the purchase, sale, lease, or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

(b) Primarily for the sale of services to the public; or

(c) Primarily for outdoor advertising display purposes, when the display is required to be moved as a result of the project; or

(d) By a nonprofit organization.

(4) "Comparable replacement dwelling" means a dwelling which is:

(a) Decent, safe and sanitary;

(b) Functionally equivalent to the displacement dwelling;

(c) Adequate in size to accommodate the occupants;

(d) In an area not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment;

(e) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(f) Currently available to the displaced person on the private market; and

(g) Within the financial means of the displaced person.

(5) "Contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs the business or farm operation:

(a) Had average annual gross receipts of not less than \$5,000; or

(b) Had average annual net earnings of not less than \$1,000; or

(c) Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.

(6) "Control of the property" means that the Transportation Cabinet has paid the owner for the property to be acquired or if acquisition is by condemnation, the Transportation Cabinet has posted the purchase price of the property with the circuit court.

(7) "Decent, safe and sanitary dwelling" means a dwelling which meets local housing and occupancy codes, but at a minimum shall:

(a) Be structurally sound, weather-tight and in good repair;

(b) Contain a safe, electrical wiring system adequate for lights and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature of approximately seventy (70) degrees for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink and a toilet, all in good working order and properly connected to a source of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;

(e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor shall have at least two (2) means of egress; and

(f) If the displaced person is an individual with a disability be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displaced person.

(8) "Displaced person" means a person who moves from the real property or moves his personal property from the real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements:

(a) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the initiation of negotiations for, or the acquisition of, the real property in whole or in part; or

(b) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the acquisition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility under this subsection applies only for the purpose of obtaining relocation assistance advisory services and moving expenses.

(9) "Dwelling" means the place of permanent or customary and usual residence of a person including a single-family house; a single-family unit in a two (2) family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(10) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(11) "Family" means two (2) or more individuals living together in a single-family dwelling unit who:

(a) Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

(b) Are not related by blood or legal ties but live together by mutual consent.

(12) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(13) "Furnished dwelling unit" means a unit in which the furnishings are owned by someone other than the displaced person.

(14) "An individual with a disability" means a person who has a physical or mental impairment that substantially limits one (1) or more major life activities, has a record of an impairment or is regarded as having an impairment.

(15) "Initiation of negotiations" means the delivery of the initial written offer of compensation to purchase the real property by the Transportation Cabinet to the owner or the owner's representative. If the Transportation Cabinet issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the date of "initiation of negotiations" is the date of the actual move of the person from the property.

(16) "Mortgage" means the classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the Commonwealth of Kentucky together with the credit instrument, if applicable.

(17) "Net earnings" means any compensation obtained from the business or farm operation by its owner or the owner's spouse the owner's dependents.

(18) "No duplication of payment" means that the person shall not receive any payment under this administrative regulation if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as the payment under this administrative regulation.

(19) "Nonprofit organization" means an organization incorporated in the Commonwealth of Kentucky as a nonprofit organization under the provisions of KRS Chapter 273 and which is exempt from paying federal income taxes under the Internal Revenue Code (26 USC 501).

(20) "Notice of intent to acquire" or "notice of eligibility for relocation assistance" means written notice furnished to a person who is to be displaced, which establishes eligibility for relocation benefits prior to initiation of negotiations.

(21) "Owner of a dwelling" means a person who has purchased or holds any of the following interest in the real property:

(a) Fee title, a life estate, a ninety-nine (99) year lease, or a lease including any options, for extension with at least fifty (50) years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) A contract to purchase any of the interests or estates described in paragraph (a) or (b) of this subsection; or

(d) Any other interest, including a partial interest, which warrants consideration as ownership.

(22) "Person" means any individual, family, partnership, corporation, or association.

(23) "Persons not displaced" means but is not limited to the following:

(a) One who moves before the initiation of negotiations, unless the Transportation Cabinet determines that the person was displaced as a direct result of the project; or

(b) One who initially occupies the property after the date of its acquisition by the Transportation Cabinet; or

(c) One who occupies the property for the purpose of obtaining assistance under this administrative regulation; or

(d) One who the Transportation Cabinet determines is not displaced as a direct result of partial acquisition of the property; or

(e) An owner-occupant who voluntarily conveys his property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Transportation Cabinet does not intend to acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the provisions of this administrative regulation; or

(f) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law; or

(g) A person determined by the Transportation Cabinet to not be displaced because of another special condition.

(24) "Purchases a dwelling" means, in addition to actually buying a dwelling, the following:

- (a) Purchases and rehabilitates a substandard dwelling; or
- (b) Relocates a dwelling which he owns or purchases; or
- (c) Constructs a dwelling on a site he owns or purchases; or
- (d) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(e) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(25) "Real property" means land, and generally whatever is erected or growing upon or affixed to land.

(26) "Salvage value" means the probable sale price of an item if offered for sale on the condition that it is to be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which the item is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(27) "Small business" means a business having not more than 500 employees working at the site being acquired or displaced by the project where the site is the location of economic activity.

(28) "Subsequent occupant" means any person who did not occupy the property at the time negotiations began for acquisition of the property and who is in occupancy at the time the property is acquired and who subsequently moves from the real property. Relocation assistance payments made to a subsequent occupant shall be through the provisions of Last Resort Housing in Section 30 of this administrative regulation.

(29) "Tenant" means a person who has the temporary use and occupancy of real property owned by another.

(30) "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Transportation Cabinet has determined has little or no value or utility to the owner.

(31) "Unlawful occupancy" means that a person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Transportation Cabinet to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property. The Transportation Cabinet may, at its discretion, consider a squatter to be in lawful occupancy.

(32) "Utility costs" means expenses for heat, light, water, and sewer.

Section 2. Applicability. (1) The payments and services set forth in this administrative regulation which involve a Transportation Cabinet project in which a person, business, farm operation, or nonprofit organization is required to relocate or discontinue operation shall be made regardless of whether federal funds are used or not used in the project.

(2) If the Transportation Cabinet acquires real property on behalf of another agency that agency may authorize the cabinet to follow the provisions of this administrative regulation.

Section 3. Relocation Notices - General. (1) Each relocation notice provided by the Transportation Cabinet shall be personally delivered or sent by certified or registered mail, return receipt requested.

(2) As soon as feasible, a person scheduled to be displaced shall be notified of the possibility of his displacement. He shall also be furnished with a general written description of the relocation program which gives at least the following information:

(a) Informs the person that he may be displaced because of the project and generally describes any relocation payment for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment;

(b) Indicates that any person displaced shall be given reasonable relocation advisory services to help the person relocate successfully including housing referrals, help in filing payment claims and other necessary assistance;

(c) Informs any displaced person lawfully occupying the property that he shall not be required to move without at least ninety (90) days advance notice except under the most unusual of circumstances;

(d) Describes the person's right to appeal the determination of eligibility for, or the amount of, any relocation payment for which the person may be eligible;

(e) Informs the person that in order to be eligible for benefits he is required to occupy the property at the time of initiation of negotiations and includes a definition of initiation of negotiations; and

(f) Informs the displaced person that he cannot be required to move permanently unless at least one (1) comparable replacement dwelling has been made available.

(3) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for acquisition of the occupied property. At this time the Transportation Cabinet shall notify each occupant or family to be displaced in writing of his eligibility for relocation assistance.

(4) A lawful occupant shall not be required to move unless he has received at least ninety (90) days advance written notice of the earliest date by which he may be required to move. Only in unusual circumstances, such as a substantial danger to the person's health or safety, shall an occupant be required to vacate the property on less than ninety (90) days advance written notice.

(5)(a) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice.

(b) The notice shall be either:

1. A specific date which is the earliest date by which he shall be required to move; or

2. A statement that before the displaced person is required to move from the property, he shall be given a thirty (30) day written notice specifying the date by which the property shall be vacated.

(6)(a) The Transportation Cabinet may issue a notice to a displaced person specifying the date by which he is required to vacate the acquired property, if:

1. The Transportation Cabinet has gained control of the property to be acquired;

2. Sixty (60) or more days have passed since the issuance of a ninety (90) day notice; and

3. Comparable replacement housing has been made available to the displaced person.

(b) The required vacation date shall be at least thirty (30) days after the notice is issued.

Section 4. Notice at Initiation of Negotiations. (1) The Transportation Cabinet shall furnish an owner-occupant of 180 days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of replacement housing computation and eligibility requirements to receive the payment;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The possibility of his eligibility to receive an increased interest payment, or payment of incidental expenses incurred in the purchase of replacement housing;

(d) His option to rent rather than purchase replacement housing;

(e) The availability of relocation assistance advisory services and how they may be obtained;

(f) A ninety (90) day notice; and

(g) His right to appeal.

(2) The Transportation Cabinet shall furnish an owner-occupant of less than 180 days no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of a rental replacement housing payment and the maximum amount of a down payment for the purchase of replacement housing, as well as the requirements to receive these payments;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice; and

(f) His right to appeal.

(3) The Transportation Cabinet shall furnish a tenant-occupant of ninety (90) days or more, no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The amount of rental and purchase replacement housing payments and the eligibility requirements to receive these payments;

(b) The address of the comparable housing used to compute the rental and replacement housing payments;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice;

(f) His right to appeal; and

(g) The date of the initiation of negotiations for the property.

(4) The Transportation Cabinet shall furnish in writing to a subsequent tenant-occupant within seven (7) working days from the date the cabinet acquires the property the following information:

(a) His eligibility to receive moving expense payments;

(b) The availability of relocation advisory services and how they may be obtained;

(c) Assurance that comparable replacement housing is available within his financial means; and

(d) The ninety (90) day notice to vacate. This notice shall specify the date by which the property shall be vacated, and shall not be issued until comparable housing is available.

Section 5. Alternate Notices. (1) The Transportation Cabinet may specify an alternative notification procedure to those established in Sections 3 and 4 of this administrative regulation if there are insufficient rental units available for the tenant-occupants of the acquired property.

(2) If the Transportation Cabinet determines that an alternative notification procedures will be used, it shall not be required to make the replacement housing payment offer to the displaced tenants within the seven (7) working days specified in Section 4(3) of this administrative regulation.

(3) The alternate notification procedure used by the Transportation Cabinet shall be as follows:

(a) Contact the owner and make the fair market value offer for the property;

(b) Within seven (7) working days, contact the tenants and give each a written statement which shall include:

1. The date of initiation of negotiations for the parcel; and

2. An explanation of the eligibility requirements to receive a rental replacement housing payment, or a down payment.

(c) At the time the replacement housing payment is computed and the written statement required in paragraph (b) of this subsection is given the tenant, the ninety (90) day notice shall be included. The cabinet shall use the procedure in issuing the thirty (30) day vacation written notice as specified in Section 4 of this administrative regulation.

(d) The thirty (30) day notice to vacate shall not be required if an occupant moves of his own volition prior to the date the Transportation Cabinet would have issued the notice.

(4) A notice of intent to acquire the property shall be furnished to an owner or tenant only if it becomes necessary to establish eligibility requirements prior to negotiations on the parcel. This notice shall not be issued until acquisition has been authorized for the project. The notice of intent to acquire the property shall contain the following:

(a) Statement of eligibility and any restrictions on eligibility;

(b) The anticipated date of the initiation of negotiations for acquisition of the property; and

(c) How additional information regarding relocation payments and services can be obtained.

(5) If a notice of intent to acquire the property is given to an owner, the tenant shall be issued the notice within fifteen (15) days. The owner shall be given a copy of the notice issued to the tenant.

(6)(a) When the Transportation Cabinet acquiring property results in a property being landlocked, the occupant of the landlocked property shall be considered displaced. The displaced occupant shall:

1. Be eligible for relocation assistance; and

2. Have one (1) year to obtain an occupied decent, safe and sanitary replacement housing.

(b) The vacation date shall begin to run from either the date the Transportation Cabinet:

1. Makes a payment for damages to the nonresident owner of the property; or

2. Posts payment for damages in court.

Section 6. Availability of Comparable Replacement Dwelling Prior to Displacement. (1) A person to be displaced shall not be required to move from his dwelling unless at least one (1) comparable replacement dwelling has been made available to the person. When possible, three (3) or more comparable replacement dwellings shall be made available. A comparable replacement dwelling shall be considered to have been made available to a person if:

(a) The person is informed of its location;

(b) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(c) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(2) The requirements of subsection (1) of this section may be waived if the displaced person is required to move in case of an emergency situation which shall include:

(a) A major disaster as described in Section 102(c) of the National Disaster Relief Act of 1974;

(b) A presidentially declared national emergency;

(c) Highway slides or floods; or

(d) When continued occupancy would constitute a substantial danger to the health or safety of the occupants or the public.

(3) If a person is required by the Transportation Cabinet to relocate for a temporary period due to an emergency, the Transportation Cabinet shall do the following:

(a) Take the necessary steps to assure the person is temporarily relocated to decent, safe and sanitary housing;

(b) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in rent and utility costs incurred in connection with the temporary relocation; and

(c) Make available to the displaced person as soon as feasible at least one (1) comparable replacement dwelling.

(d) In the case of an emergency relocation, the date of displacement shall be the date the person moves from the temporarily-occupied dwelling. This date shall be used in:

1. Filing a claim for relocation assistance; and

2. Determining eligibility requirements for a relocation payment.

Section 7. Relocation Advisory Services. (1) The Transportation Cabinet Advisory Services Program shall include the measures, facilities, and services that may be necessary or appropriate in order

- to:
- (a) Personally interview each family or person to be displaced to:
 1. Determine the person's relocation needs and preferences;
 2. Explain the relocation payments; and
 3. Explain other assistance for which the person may be eligible, including requirements for obtaining the assistance;
 - (b) Provide current and continuing information on the availability, price and rental cost of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one (1) comparable replacement dwelling is made available;
 - (c) In order that the displaced person is made aware of the amount of the replacement housing payment to which he may be entitled, inform the displaced person, in writing, of:
 1. The specific comparable replacement dwelling;
 2. The price and rent used as a basis for establishing the upper limit of the replacement housing payment; and
 3. The basis for the determination;
 - (d) If feasible, inspect the comparable housing prior to its being made available to assure that it is decent, safe and sanitary;
 - (e) It shall be the policy of the Transportation Cabinet to provide a minority displaced person an opportunity to elect relocation to a replacement dwelling which is located outside an area of minority concentration if:
 1. It would not require the Transportation Cabinet to pay a larger relocation payment than is required by this administrative regulation; and
 2. It is within the financial means of the minority displaced person;
 - (f) Offer the displaced person transportation to inspect housing to which he is referred;
 - (g) Provide current and continuing information on the availability, location purchase price, and rental cost of comparable and suitable commercial and farm properties. Assist any person displaced from a business, farm operation, or nonprofit organization to obtain and become established in a suitable replacement location;
 - (h) Minimize hardships to persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and other help that may be appropriate;
 - (i) Supply persons to be displaced with information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be displaced;
 - (j) Advise a displaced person that no payments received under the relocation assistance program shall be considered as income for the purposes of:
 1. The federal Internal Revenue Code; or
 2. Determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal or state law; and
 - (k) Maintain contact with other governmental agencies to determine the extent of other programs which might affect the Transportation Cabinet relocation program and the availability of housing resources.
 - (2) The amount and extent of the relocation advisory services rendered shall be determined by the needs of the displaced person.
 - (3) The Transportation Cabinet may offer relocation advisory services to a person occupying property adjacent to the real property acquired if that person is caused substantial economic injury because of the cabinet's acquisition of the real property.
 - (4) The Transportation Cabinet shall coordinate relocation activities with project work and other displacement-causing activities to ensure that persons displaced receive consistent treatment and duplication of functions is minimized.
- Section 8. Claims for Relocation Assistance Payments. (1)(a) Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred.
- (b) A displaced person shall be provided reasonable assistance in completing and filing a claim for payment.
 - (c) The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required.
 - (d) Payment for a relocation assistance claim shall ordinarily be made only after:
 1. The displaced person has moved or after closing; and
 2. As soon as feasible following receipt of sufficient documentation to support the claim.
 - (e) The payment for a claim may be processed in advance of a move or closing but shall not be made until it can be reasonably expected that the objective of the payment has been or is to be accomplished.
 - (2) All claims for a relocation payment shall be filed based on the following unless the time limits have been waived for good cause by the Transportation Cabinet:
 - (a) For tenants, within eighteen (18) months after the date of displacement; or
 - (b) For owners, within eighteen (18) months of the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.
 - (3) If two (2) or more occupants of one (1) household of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if it is determined that two (2) or more occupants maintained separate households within the same dwelling, the occupants shall have separate entitlements to relocation payments.
 - (4) If a person to be displaced owes rent to the Transportation Cabinet, the amount owed may be deducted from his relocation assistance payment unless the deduction would prevent the displaced person from obtaining comparable replacement housing. The Transportation Cabinet shall not withhold any part of a relocation assistance payment to a displaced person to satisfy an obligation to any other creditor.
 - (5) By written agreement between the displaced person, the mover and the Transportation Cabinet, the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover. The displaced person shall initially make this request on forms prescribed and furnished by the Transportation Cabinet.
 - (6) If the Transportation Cabinet denies a claim of eligibility for or the amount of a payment, the claimant shall be promptly notified in writing of the reason for denying the claim and of his right to appeal pursuant to Section of this administrative regulation.
- Section 9. Moving and Related Expense Payments-General. Moving and related expense payments are types of relocation assistance payments. Any eligible individual, family, business, farm operation, or nonprofit organization displaced by a Transportation Cabinet project and who qualifies as a displaced person is entitled to payment of his actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary.
- (1) To be eligible for moving and related expense payments the displaced person shall:
 - (a) Be in legal occupancy at the initiation of negotiations for the real property or at the time the property is acquired, in whole or in part by the Transportation Cabinet or at the time he is given a written notice by the Transportation Cabinet of intent to acquire the real property; and
 - (b) Move from the real property, or move his personal property from the real property subsequent to the dates established in paragraph (a) of this subsection.
 - (2) If the acquisition of real property used for a business, farm operation, or nonprofit organization causes a person to vacate a

dwelling or other real property not acquired by the Transportation Cabinet, the additional moving cost shall be eligible for reimbursement. Also, if it is necessary to move personal property that is legally located within the acquired property, the cost shall be eligible for reimbursement.

(3) A second move for a displaced person shall not be automatically authorized, nor generally eligible for payment. However, under exceptional circumstances, a second moving payment may be made. Prior to authorizing a second move, the Transportation Cabinet shall consider all special circumstances.

(4) The displaced person shall be informed in writing as soon as possible after the initiation of negotiations of the following requirements:

(a) The displaced person shall provide the Transportation Cabinet reasonable advance notice of the approximate date of the start of the move or disposition of his personal property and a list of the items to be moved; and

(b) The displaced person shall allow the Transportation Cabinet to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and allow the cabinet to monitor the move.

Section 10. Moving and Related Expense Payments for Residential Moves. (1) A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person:

(a) Is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family.

(b) Has the option to receive reimbursement on the basis of actual, reasonable expenses, or from the fixed-rate schedule listed in subsection (7) of this section which is based on the number of rooms of personal property.

(2) An owner-occupant of a multiple-family dwelling may be entitled to a moving payment for a residential move for himself and moving payments for his personal property located in other units.

(3) In order to determine that more than one (1) household exists in a single dwelling unit, each family unit shall have separate baths, kitchen areas and bedrooms.

(a) Two (2) or more families occupying the same dwelling unit, who are required to relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule.

(b) Two (2) or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule. A fixed-rate schedule move payment shall be based on the number of rooms actually occupied by each family, plus community rooms utilized by each family.

(c) Two (2) or more individuals who occupy the same dwelling unit are considered to be a single family and payments shall be made accordingly.

(4) When an owner retains his dwelling, the cost of moving it onto a different site is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property, the cost of moving the personal property may be considered eligible for reimbursement. Payments in these cases shall be from the fixed-rate schedule.

(5) If the displaced person elects to move on an actual cost basis, the following expenses are eligible for payment:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of the personal property for a period not to exceed twelve (12) months, unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the property in connection with the move and necessary storage;

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and

(g) Other moving related expenses not listed as ineligible in Section 14 of this administrative regulation but which are determined by the Transportation Cabinet to be reasonable and necessary.

(6)(a) The displaced person may elect to move by the use of a licensed commercial mover and receive reimbursement for the actual, reasonable expenses. These expenses shall be supported by receipted bills.

(b) The Transportation Cabinet may furnish the displaced person a list of licensed movers in the area.

(c) The displaced person shall select one (1) mover and the Transportation Cabinet shall select one (1) mover.

(d) The Transportation Cabinet shall:

1. Obtain from both of the selected movers an estimate of the moving costs including any necessary utility service connections.

2. Base payment on the lower estimate.

(e) The displaced person may hire either company.

(7) The displaced person, including a person displaced from a seasonal residence, may elect to move his personal property according to the fixed-rate schedule. The separate items authorized under commercial and self moves have been included in establishing the fixed-rate schedule and no additional moving payments shall be authorized. The room count of furniture shall be based on the actual number of furnished rooms, plus basements, attics, garages and out buildings if such spaces contain sufficient personality as to constitute a room. Payment shall be based on the following schedule:

1 Room = \$250 5 Rooms = \$ 750

2 Rooms = \$400 6 Rooms = \$ 850

3 Rooms = \$550 7 Rooms = \$ 950

4 Rooms = \$650 8 Rooms = \$1050

Each Additional Room = \$100

(8) If the displaced person lives in a furnished dwelling unit, he shall be paid moving costs for moving his personal property according to the following schedule:

First room = \$225

Each additional room = \$35

(9) The moving expenses of a person with minimal personal possessions who occupies a dormitory style room shared by two (2) or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to fifty (50) dollars.

Section 11. Moving and Related Expense Payments, Including Reestablishment Expenses, for Business, Farm Operations, or Nonprofit Organizations. The owner of a displaced business, farm operation, or nonprofit organization is entitled to receive a payment for moving and related expenses, including reestablishment expenses.

(1) Any business, farm operation, or nonprofit organization which qualifies as a displaced person is entitled to payment for the actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary, including expenses for the following:

(a) Transportation of personal property. Transportation costs for a distance beyond fifty (50) miles are ineligible, unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property and including connection to utilities available nearby. Also, included are modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded);

(d) Storage of the personal property for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the personal property in connection with the move and necessary storage;

(f) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be prorated, based on the remaining useful life of the existing license, permit or certification;

(g) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(h) Professional services necessary for planning the move of the personal property; moving the personal property; and installing the relocated personal property at the replacement location.

(2) The owner of a business, farm operation, or nonprofit organization, may be paid the actual reasonable cost of moving his personal property as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items are to actually be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation, or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers when a replacement property has been found. The payment of moving expenses shall be authorized only on the basis of the lower of the bids.

(3) The owner of the business, farm operation, or nonprofit organization, may elect to move himself. Under this circumstance the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items actually are to be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation, or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers after a replacement property has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that all property was moved to the new location.

(4) If the cost of the move is not likely to exceed \$5,000, a single

estimate may be prepared by a qualified staff employee of the Transportation Cabinet other than the person preparing the claim.

(5) When the Transportation Cabinet obtains bids for a business, farm operation, or nonprofit organization move, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(6) If it is necessary to reprint available stationery because the business, farm operation, or nonprofit organization, has been relocated, the Transportation Cabinet shall pay the actual cost for reprinting the number and type of item to be replaced. Payment shall be made for only the number of each item approved in advance of the reprinting by the Transportation Cabinet. The claim for payment shall be documented by receipted bills from the provider.

(7) If it is necessary to reletter a sign that has been made obsolete as a result of the move, if possible, only that portion of the sign which changes shall be eligible to be relettered. However, if necessary, the cost of relettering the complete sign shall be an eligible expense. The payment request shall be documented by receipted bills from the provider. Approval of the relettering shall be obtained from the Transportation Cabinet in advance of work being performed.

(8)(a) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location.

(b) Payment shall be limited to \$1,000.

(c) The items for which an invoice may be submitted include:

1. Transportation;
2. Lodging and meals away from home;
3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and
4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(d) The claim for payment shall be documented by receipted bills for meals and lodging when away from home and an affidavit shall be required for mileage and time. The affidavit shall show:

1. Persons contacted;
2. Places visited;
3. Activity involved; and
4. Basis for the hourly rate charged for time.

(9)(a) Payment of actual direct losses of tangible personal property may be made when the business, farm operation, or nonprofit organization owner moves or discontinues his operation. Payment for actual direct losses of tangible personal property may be made only after a bona fide effort has been made by the owner to sell the items involved. The payment shall consist of the lesser of:

1. The fair market value of the item for continued use at the displacement site less the proceeds from its sale.

a. The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary.

b. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price; or

2. The estimated cost of moving the item, with no allowance for storage. If the business, farm operation, or nonprofit organization is discontinued, the estimate shall be based on a move of fifty (50) miles;

(b) The prompt purchase of substitute personal property to replace an item not to be moved in a business, farm operation, or nonprofit organization move, yet which performs a comparable function at the replacement site. Payment shall be the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost for the move is \$5,000 or less, the estimated cost may be based on a single estimate prepared by a qualified Transportation Cabinet employee.

(c) If no offers are received for the property at the sale and the property is abandoned, payment for the actual direct loss of that item shall not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item fifty (50) miles, whichever is less, plus the reasonable costs of the attempted sale, irrespective of the cost to the Transportation Cabinet of removing the item.

(d) If personal property is abandoned with no effort made by the owner to dispose of the property by sale, the owner shall not be entitled to moving expenses, or losses, for the item involved.

(e) The cost of removal by the Transportation Cabinet of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(f) The sale price, if any, and the actual reasonable costs of advertising and conducting the sale shall be supported by a copy of the bill of sale or similar documents, and by copies of any advertisements, offers to sell, auction records, and other data which support the sale.

(10) A small business, farm operation, or nonprofit organization is entitled to receive a payment not to exceed \$10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation, or nonprofit organization at the replacement site. Eligibility for this payment shall be contingent upon the following:

(a) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include:

1. Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance.

2. Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

3. Construction and installation costs for exterior signing to advertise the business.

4. Provision of utilities from the right-of-way to improvements on the replacement site.

5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

6. Licenses, fees and permits when not paid as a part of moving expenses.

7. Feasibility surveys, soil testing and marketing studies.

8. Advertisement of the replacement location.

9. Professional services in connection with the purchase or lease of a replacement site.

10. Increased cost of operation during the first two (2) years at the replacement site for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees.

11. Impact fees or one (1) time assessments for anticipated heavy utility usage.

12. Other items determined by the Transportation Cabinet to be essential to reestablishment of the business.

(b) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done to determine what repairs or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet itemized paid receipts for reestablishment expenses he has incurred.

(c) The following is a nonexclusive list of reestablishment expenses not considered to be reasonable, necessary, or eligible:

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;

2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operations;

3. Interest on money borrowed to make the move or purchase the replacement property;

4. Payment to a part-time business in the home which does not contribute materially to the household income.

(d) Sites occupied solely by outdoor advertising signs, devices or displays do not qualify as a business for reestablishment expenses under the provisions of this section.

Section 12. Moving and Related Expense Payments for Advertising Signs. (1) The owner of an eligible displaced advertising sign which is not included in the appraisal of the real property is entitled to receive a payment for moving and related expenses as determined by the Transportation Cabinet to be reasonable and necessary, including:

(a) Transportation of the advertising sign. Transportation costs for a distance beyond fifty (50) miles shall be ineligible unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, or uncrating of the advertising sign;

(c) Disconnecting, dismantling, removing, reassembling, or reinstalling relocated machinery, equipment, or other personal property related to the advertising sign and substitute personal property, including connection to utilities available nearby;

(d) Modifications to the advertising sign necessary to adapt it to the replacement structure, the replacement site, or utilities at the replacement site;

(e) Modifications necessary to adapt utilities at the replacement site to the advertising sign, excluding expenses for providing utilities from the right-of-way to the sign;

(f) Storage of the advertising sign for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For storage costs to be eligible the Transportation Cabinet shall determine that:

1. Storage is reasonable and necessary; and

2. The advertising sign is not stored on property being acquired or property owned or leased by the displaced person;

(g) Insurance for the replacement value of the advertising sign in connection with the move and necessary storage;

(h) Any license, permit, or certification required of the displaced person at the replacement location. Payment may be prorated based on the remaining useful life of any existing license, permit or certification;

(i) The replacement value of the advertising sign or property related to it which is lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(j) Professional services necessary for:

1. Planning the move of the advertising sign;

2. Moving the advertising sign; or

3. Installing the relocated advertising sign at the replacement location.

(2) The owner of an advertising sign which is not included in the appraisal of the real property may be paid the actual cost of moving the sign as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain photographs of the advertising sign to be moved. The displaced person shall certify that the sign will actually be moved to the replacement site. If there is a significant change in the sign relocation, the amount to be paid shall be revised accordingly.

(b) Obtain two (2) bids from qualified movers once a replacement

site has been found. Payment of moving expenses shall be authorized only on the basis of the lower of two (2) acceptable bids.

(3) The owner of an advertising sign which is not included in the appraisal of the real property, may elect a self-move based on the lower of two (2) bids from qualified movers. Under this circumstance the Transportation Cabinet shall:

(a) Obtain photographs of the advertising sign to be moved. The displaced person shall certify that the sign will actually be moved to the replacement site. If there is a significant change in the sign relocation, the amount to be paid shall be revised accordingly;

(b) Obtain two (2) bids from qualified movers once a replacement site has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that the sign was moved to the new location.

(4) If the cost of the move is not likely to exceed \$5,000, a single estimate may be prepared by a qualified Transportation Cabinet employee other than the person preparing the claim.

(5) The displaced person shall give the Transportation Cabinet reasonable, advance notice of the approximate date the move will commence.

(6) When the Transportation Cabinet obtains bids for moving a sign, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(7) The Transportation Cabinet shall reimburse the owner of a displaced advertising sign actual and reasonable expenses in searching for a new location.

(a) Payment shall be limited to \$1,000.

(b) The items for which an invoice may be submitted include:

1. Transportation;
2. Lodging and meals away from home;
3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and
4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of the site.

(c) Receipts will be required for meals and lodging when away from home. An affidavit which includes the following items is required to document mileage and time:

1. Persons contacted;
2. Places visited;
3. Activity involved; and
4. Basis for the hourly rate charged for time.

(8) Payment for actual direct losses of tangible personal property may be made when the owner of a displaced advertising sign which is excluded from the appraisal of the real property elects not to relocate the sign. The direct loss payment shall be the lesser of the following:

(a) The depreciated reproduction cost of the sign less the proceeds from its sale; or

(b) The estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.

Section 13. Miscellaneous Moves. There are entities to be relocated that meet none of the definitions of a business, a farm operation, or a nonprofit organization. The moving expenses in these instances shall usually be paid as a self-move. Examples of moves of this type are:

(1) Partial taking of a farm; or residential lot on which only a shed, barn or garage contains personal property;

(2) Acquisition of a tenant-occupied residence if the owner has some personal property in the building; or

(3) Acquisition of a tenant-occupied service station where the owner or distributor has personal property to be moved.

Section 14. Ineligible Moving and Related Expenses. A displaced person shall not be entitled to payment for the following:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

(2) Interest on a loan to cover moving expenses;

(3) Loss of good will;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location (except as provided for under reestablishment expenses);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Transportation Cabinet;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization except as provided for under actual reasonable moving expenses and reestablishment expenses; or

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

Section 15. Fixed Payments In Lieu of Payments for Moving and Related Expenses, Including Reestablishment Expenses, to Businesses, Farms, and Nonprofit Organizations. (1) An eligible owner of a discontinued or relocated business may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, which are set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the business but not less than \$1,000 and not more than \$20,000.

(b) For an owner of a business to be entitled to this fixed payment, the Transportation Cabinet shall determine that the business meets all of the following:

1. It owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move;

2. It vacates or relocates from the displacement site;

3. It cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;

4. It is not part of a commercial enterprise having more than three (3) other entities which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;

5. It is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others;

6. It is not operated at the displacement site solely for the purpose of renting the site to others; and

7. It contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(c) The displaced owner of a business shall furnish proof of net earnings through income tax returns.

(d) The payment amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(e) In determining whether two (2) or more displaced legal entities constitute a single business which is entitled to only one (1) fixed

payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and
4. The same person or closely related persons own, control, or manage the affairs of the entities.

(2) An eligible owner of a displaced farm operation may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the farm operation, but not less than \$1,000 and not more than \$20,000.

(b) In the case of partial acquisition of land which was a farm operation prior to the acquisition, a fixed payment shall be made only if the Transportation Cabinet determines that:

1. The partial acquisition caused the operation to be displaced from the farm operation on the remaining land; or
2. The partial acquisition caused a substantial change in the nature of the farm operation.

(c) For an owner of a farm operation to be entitled to this fixed payment, the farm operation shall have contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(d) The displaced owner of a farm operation shall furnish proof of net earnings through income tax returns.

(e) The amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(3) An eligible displaced nonprofit organization may choose a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The fixed payment shall not be less than \$1,000 nor more than \$20,000.

(b) Any request for payment in excess of \$1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition.

(c) The amount to be used in determining the fixed payment is the average of two (2) years annual gross revenues less administrative expenses.

(d) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fundraising activities.

(e) Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses but shall not include operating expenses for carrying out the purpose of the nonprofit organization.

(f) A displaced nonprofit organization shall furnish proof of monetary receipts and expense amounts through certified financial statements or financial documents required by public agencies.

Section 16. Replacement Housing Payments - General. (1) It shall be the policy of the Transportation Cabinet to consistently apply the provisions of this administrative regulation relating to eligibility for replacement housing payments to housing situations not specifically provided for in this administrative regulation. Displaced persons may include individuals or families displaced from condominiums or cooperative apartments.

(2) The displaced individual or family shall not be required to relocate to the same occupancy (owner or tenant) status in order to receive the replacement housing payment, but has other options

based on his ownership status and tenure of occupancy.

(3)(a) The Transportation Cabinet shall not participate in more than one (1) replacement housing payment for each dwelling unit, except in the case of multifamily occupancy of a single family dwelling as described in Section 18 of this administrative regulation.

(b) The claim for payment shall be filed with the cabinet no more than eighteen (18) months after the date of displacement for tenants.

(c) For owners, the claim for payment shall be filed no more than eighteen (18) months after the date of:

1. Displacement; or
2. The final payment for the acquisition of real property, whichever is later.

(d) Before the payment is made to the displaced person, the Transportation Cabinet shall determine that the replacement dwelling is decent, safe and sanitary.

(4)(a) If a displaced person qualifies for a replacement housing payment, but has not yet purchased or occupied a suitable replacement dwelling, provided he purchases and occupies the inspected dwelling within the one (1) year time limit, the Transportation Cabinet shall provide a written or oral certification that the displaced person is eligible for the payment of a specific amount

(b) The Transportation Cabinet shall release this certification only:

1. Upon the request of the displaced person who is purchasing the dwelling;
2. After inspecting the proposed dwelling; and
3. Upon finding that the dwelling is decent, safe and sanitary.

(c) The certification shall include the address of the property inspected and the amount of money the displaced person is required to spend for the replacement property in order to receive the full amount of his replacement housing payment.

(5)(a) Replacement housing payments may be made directly:

1. To the relocated individual or family; or
2. Upon written instructions from the displaced person:
 - a. Directly to the lessor for rent; or
 - b. Directly to the seller for use toward the purchase of a dwelling.
- (b) This written instruction from the displaced person shall be submitted with the application for payment.

(c) The Transportation Cabinet shall make the replacement housing payment into an escrow account if:

1. The displaced person has made a specific request in the application; and
2. The applicant otherwise qualifies for a replacement housing payment.

(6)(a) The Transportation Cabinet shall determine the probable selling price of a comparable dwelling by analyzing at least three (3) comparable dwellings representative of the dwelling unit to be acquired which are available on the private market.

(b) Less than three (3) comparable dwellings may only be used for this determination when sufficient comparable dwellings are not available.

(c) Selection of comparable dwellings and computation of payment shall be made by a qualified Transportation Cabinet employee other than the appraiser or review appraiser on the parcel involved.

(d) The selected comparable dwellings shall be the most nearly comparable available and equal to or better than the subject property.

(7)(a) If the lapse of time between obtaining a listing of an available dwelling which is used to compute a replacement housing payment and the offer of the replacement housing payment amount to the displaced person exceeds thirty (30) days, the Transportation Cabinet shall determine that the property is still on the market.

(b) If a check of the market reveals the comparable dwelling relied upon is not available, a new comparable dwelling shall be selected and a new replacement housing payment computed.

(8) An adjustment shall be made to the asking price of the selected comparable dwelling only when the market reflects a difference of more than five (5) percent in the asking price and the

sale price of comparable housing in the area. To determine whether an adjustment to the asking price is needed the Transportation Cabinet may contact realtors or use multiple listings books for recent sales.

(9)(a) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (for example, the site is significantly smaller or does not contain a swimming pool), the value of the attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(b) If an uneconomic remnant of land remains after the Transportation Cabinet acquired only a portion of a tract of property and the owner of the remaining property refuses to sell it to the Transportation Cabinet, the fair market value of the uneconomic remnant shall be deducted from the before value of the displacement dwelling for purposes of computing the replacement housing payment.

(10) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(11) A person who occupies a property for less than ninety (90) days before initiation of negotiations or who occupies the property subsequent to the initiation of negotiations but before the property is acquired is entitled to moving expenses and advisory services. Any replacement housing payment if applicable shall be made under the provisions of Section 30 of this administrative regulation.

(12) A person shall not be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this administrative regulation for a reason beyond his control, such as:

- (a) A disaster;
- (b) An emergency; or
- (c) An imminent threat to the public health or welfare as determined by:
 1. The President;
 2. The federal agency funding the project; or
 3. The Transportation Cabinet; or
- (d) A delay in the construction of the replacement dwelling;
- (e) Military reserve duty; or
- (f) A hospital stay.

(13)(a) A displaced tenant who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a purchase or down payment assistance payment if he meets the eligibility criteria for the payments, including purchase and occupancy within the prescribed one (1) year period.

(b) Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

(c) A displaced owner-occupant who originally rents a replacement dwelling and receives a rent supplement payment is eligible to receive a replacement housing payment, if he purchases and occupies a dwelling within the prescribed one (1) year.

(14)(a) A replacement housing payment is personal to the displaced person and upon his death, the undisbursed portion of any payment shall not be paid to the heirs or assigns, except that the amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(b) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy a decent, safe and sanitary replacement dwelling.

(c) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(15) In order to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when the Transportation Cabinet

computes the replacement housing payment.

Section 17. Replacement Housing Payments - Partial Tract Acquisition. (1)(a) If the acquired dwelling is located on a tract typical in size for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling on a tract typical in size for the area, less the difference in the before and after values of the residential property.

(b) This difference represents the acquisition price and shall include any damages to the portion of the tract not acquired by the Transportation Cabinet.

(2) If the acquired dwelling is located on a tract larger in size than typical for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the tract which is a typical size for computation of the maximum replacement housing payment. The maximum housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total tract.

(3)(a) If the acquired dwelling is located on a farm and if only a portion of the farm is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the farm which is a typical size tract for a residential property in the area for computation of the maximum replacement housing payment.

(b) The maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total farm.

(4) If an outbuilding is located on the tract to be acquired and if the outbuilding is used for nonresidential purposes such as corncribs or implement storage, its value shall not be included in the computation of the replacement housing payment.

(5) If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the difference in the before and after value of the typical size homesite using the value indicated by the higher and better use, or if larger than typical, the difference in the value before and after a portion is carved out. This difference shall represent the acquisition price.

Section 18. Replacement Housing Payments - Multiple Occupancy of Same Dwelling Unit. (1)(a) If two (2) or more eligible families occupy the same single-family dwelling unit, and a comparable replacement dwelling is available, the occupants are entitled to only one (1) replacement housing or rent supplement payment.

(b) If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family shall be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants.

(c) For owner-occupants the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

(2)(a) If two (2) or more eligible individuals occupy the same single-family dwelling unit, they are considered one (1) family for replacement housing payment or rent supplement purposes.

(b) If all individuals do not relocate to decent, safe and sanitary housing, the Transportation Cabinet shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a proportional share of the payment that would have been received if

all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(3) If a displaced individual or family occupies living quarters on the same premises as a displaced business, farm or nonprofit organization, the individual or family is a separate displaced person for purposes of determining entitlement to relocation payments. The Transportation Cabinet shall compute the replacement housing payment for joint residential and business use properties as follows:

(a) If the owner occupies living quarters in the building the replacement housing payment shall be determined by establishing the difference in the before and after value of the land using the appraised value (if acquiring the entire tract the cabinet shall use the total land value) adding the value of the living quarters portion of the building and then subtracting the total from the most comparable property to the living quarters available for sale on the market.

(b) If a tenant occupies living quarters in the building to be acquired, the replacement housing payment shall be determined by subtracting the base monthly rent of the displaced tenant in the acquired dwelling as determined in Section 24(2) of this administrative regulation from the amount the displaced person actually pays per month for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities. That amount shall be multiplied by forty-two (42) to establish the replacement housing payment.

(c) A displaced person eligible for a rental replacement housing payment under Section 24(1) of this administrative regulation may receive a down payment assistance payment not to exceed \$5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(4) The procedure for computing replacement housing payment amounts to an owner of a multifamily dwelling who occupies one (1) unit is as follows:

(a) The comparable dwellings considered in the computation shall be the same as that acquired, that is, if the property is a triplex, then the comparable dwellings shall be triplexes. If comparable dwellings are not available, structures of the next lowest density shall be used. If there are not any available comparable multifamily structures to be found, the comparison of the owner's living unit shall be to a single-family residence. A higher density structure shall never be used as a comparable structure.

(b)1. The value of the owner's unit shall be used as the basis for the replacement housing payment determination, not the entire fair market value of the property being acquired. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property.

2. If the comparable housing is a triplex:

a. The replacement housing payment is based on the value of only one (1) of the three (3) units;

b. A duplex, the payment is based on the value of only one (1) of the two (2) units;

c. A single-family dwelling, the payment is based on the entire value of the dwelling.

3. The other living units of a multifamily dwelling shall not be included in the value of a comparable unit because these are considered as income producing and not part of the owner's personal living area.

Section 19. Replacement Housing Payments - Owner-Occupants of 180 Days or More. (1) A displaced owner-occupant may receive replacement housing payments if the displaced person has actually owned and occupied the displacement dwelling for 180 days or more immediately prior to the initiation of negotiations and if he purchases and occupies a decent, safe and sanitary replacement dwelling within

a one (1) year period, beginning on the later of the following dates:

(a) The date the person receives final payment from the Transportation Cabinet for the displacement dwelling; or

(b) In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court; or

(c) The date the person is advised by the Transportation Cabinet of the availability of comparable housing.

(2) The owner-occupant is eligible for a replacement housing payment when:

(a) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or part;

(b) He is in occupancy at the time he is given a written notice by the Transportation Cabinet of intent to acquire the property by a given date;

(c) His occupancy of the property has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and

(d) He purchased and occupied a decent, safe and sanitary dwelling within the time period specified in subsection (1) of this section;

(3) The combined total of the replacement housing payments for an owner-occupant of 180 days shall not exceed \$22,500 for the additional costs necessary to purchase replacement housing; for compensation to the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for expenses incidental to the purchase of replacement housing which are incurred.

(4)(a) The amount of the replacement housing payment for the sole owner of a dwelling is the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling, whichever is less.

(b) When the displaced person obtains his decent, safe and sanitary replacement dwelling (not necessarily comparable to the dwelling from which he was displaced), his replacement housing payment shall be based on the amount spent for the replacement dwelling.

(c) If the replacement dwelling is not decent, safe and sanitary, he may be paid to correct the deficiencies if he maintains documented receipts.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for decent, safe and sanitary replacement dwelling.

(5) If a single-family dwelling is owned by several persons, and occupied by only part of the owners, the replacement housing payment shall be the lesser of:

(a) The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

(b) The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling.

(6) If the displaced owner-occupant of 180 days or more does not purchase and occupy a decent, safe and sanitary dwelling, he shall be entitled to receive a rent supplement payment if he rents and occupies a decent, safe and sanitary dwelling.

(7) It shall be the Transportation Cabinet's responsibility to make available a comparable replacement dwelling unit and to relocate the displaced person to his original ownership status if this is his desire. If the displaced owner-occupant desires to rent, the Transportation Cabinet shall make a reasonable effort to accomplish the request.

(8)(a) When an owner-occupant of 180 days or more retains and moves his dwelling to another location, the Transportation Cabinet shall determine if he is eligible for a replacement housing payment.

(b) If the dwelling meets the decent, safe and sanitary standards,

improvements such as room additions or remodeling shall not be allowed in determining the amount of the replacement housing payment.

(c) If the dwelling retained and moved is not decent, safe and sanitary, the cost to improve it so that it complies with adequate standards shall be allowed if documented receipts are maintained.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for a decent, safe and sanitary replacement dwelling.

(9) If an owner-occupant of 180 days or more has received a rental replacement housing payment and subsequently chooses to purchase a replacement dwelling, the amount of the rental replacement housing payment shall be deducted from the amount he would have been entitled to receive if he had purchased a replacement dwelling immediately. The combined payments shall not exceed \$22,500.

(10) If the owner is allowed the option of retaining his dwelling, the replacement housing payment shall be computed in accordance with the appropriate paragraph below. The payments computed under paragraphs (a) through (c) of this subsection shall not exceed the amount the displaced person would have received if he had purchased a replacement dwelling.

(a) If the dwelling is decent, safe and sanitary, the payment, if any, shall be the amount by which the cost to relocate the retained dwelling exceeds the acquisition price of the dwelling and homesite. The cost to relocate may include the reasonable costs of acquiring a new site and other expenses incidental to retaining and moving the dwelling, and restoring it to a condition comparable to that before the move. Payment shall not exceed \$22,500;

(b) If the owner chooses to move his dwelling to a part of the tract not acquired by the Transportation Cabinet, the current fair market value for purchase of a residential site, not to exceed a typical size homesite, may be included as a cost to relocate the dwelling; or

(c) If the retained dwelling is not decent, safe and sanitary, the payment shall be computed as shown above, except the costs to correct deficiencies shall be included in the costs to relocate.

(11)(a) An owner-occupant of 180 days or more eligible for a purchase replacement housing payment who elects to rent a replacement dwelling is eligible for a rental replacement housing payment which shall not exceed \$5,250 unless the conditions of subsection (12) of this section exist.

(b) To compute the eligible payment, from the amount the displaced person actually pays for a rental replacement dwelling, including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the fair market rent including monthly utilities of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(12) The rental payment authorized by subsection (11) of this section may only exceed \$5,250 if the payment to purchase for an owner-occupant of 180 days could have been authorized as a last resort housing payment under Section 30 of this administrative regulation and therefore, could have exceeded \$22,500.

Section 20. Replacement Housing Payments - Owner-Occupants of Less Than 180 Days. (1)(a) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days and who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed \$5,250.

(b) To compute the rental payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the monthly fair market rent of the acquired dwelling as determined by the cabinet, then multiply that

amount by forty-two (42).

(2) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days, may elect to receive an amount to enable him to make a down payment on the purchase of a replacement dwelling including the actual expenses incidental to the purchase, not to exceed \$5,250, or for additional costs to relocate his retained dwelling in accordance with the following:

(a) The full amount of the payment shall be applied toward the purchase of the replacement dwelling and related incidental expenses and the displaced person shall purchase and occupy the dwelling within the time frame specified in Section 24(1) of this administrative regulation;

(b) The displaced person may be eligible for the entire \$5,250 for a down payment including incidental expenses, when the amount of the rental replacement housing computation is less than \$5,250 or is zero, except either payment shall not exceed the amount the displaced person would receive if he were an owner-occupant of 180 days or more.

(3)(a) If an owner-occupant of less than 180 days retains his dwelling, then the replacement housing payment, if any, shall be determined in accordance with the provisions of Section 19(10) of this administrative regulation, but the payment shall not exceed \$5,250.

(b) If an owner-occupant of less than 180 days has received a rental replacement housing payment, the amount of the rental payment shall be deducted from the amount to which he is entitled.

(c) The combined payments shall not exceed \$5,250.

Section 21. Revisions to Replacement Housing Payment. (1) If the comparable housing used in the Transportation Cabinet's computation is not available at the time of the relocation offer, a new replacement housing payment shall be computed based on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. ~~However, the new replacement housing payment amount shall not be less than the original computed amount.~~

(2) When an adjustment is made in the fair market value offer to the owner-occupant because of an administrative settlement, an appeal from the commissioners' award, jury award or similar reason the replacement housing payment shall be recomputed based on the new acquisition price.

Section 22. Replacement Housing Payments - Increased Interest Payments. Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(1)(a) The increased interest payment shall be allowed only when the dwelling acquired by the Transportation Cabinet was encumbered by a mortgage which was made in good faith without fraud or deceit and which was a valid lien on the dwelling for not less than 180 days prior to initiation of negotiations for the acquisition of the real property, in whole or in part, or at the time a written notice is given of the Transportation Cabinet's intent to acquire the property and the displaced person obtains a mortgage on his replacement dwelling at a higher interest rate than the mortgage rate on the dwelling acquired by the Transportation Cabinet.

(b) All mortgages on the dwelling acquired by the Transportation Cabinet shall be considered in computing the increased interest cost portion of the replacement housing payment.

(c) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) In determining the amount of the increased interest payment, the computation shall be based on the monthly payment of the old mortgage, the remaining term of the old mortgage or term of new mortgage, whichever is shorter, and the old and new interest rates. Most increased interest payments shall also be based on the unpaid mortgage balance on the displacement dwelling. However, if the new

mortgage amount is less, the payment shall be reduced accordingly.

(3) Documentation of the terms, amount and interest rate for the existing and new mortgages shall be submitted on a form prescribed and furnished by the Transportation Cabinet. This form shall be completed for the existing and new mortgages and signed by a representative of the lending agency. When a loan is included in a land contract, a copy of the contract may be used for documentation.

(4) Payment for purchaser's points, loan origination fees or assumption fees but not seller's points, shall be paid to the extent that:

- (a) They are not paid as incidental expenses;
- (b) They do not exceed rates normal to real estate transactions in the area; and
- (c) They are determined to be necessary; and
- (d) The points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount of the mortgage payment computed in this section.

(5) To document these charges in subsection (4) of this section, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(6) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual interest rate but shall not exceed the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(7) Increased interest payments normally shall be made directly to the displaced person. However, upon written request from the displaced person the payment may be made directly to the mortgagee of the replacement dwelling or may be paid into escrow prior to the displaced person's moving.

(8)(a) If the dwelling acquired is located on a tract normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the mortgage balance shall be reduced by the percentage ratio the acquisition price bears to the before value of the total tract. The reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(b) If a dwelling is located on a tract larger than normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(9) The interest payment on multiuse properties shall be reduced to the percentage ratio the residential value of the multiuse property bears to the before value.

(10)(a) If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as shown in subsection (8)(b) of this section.

(b) If the mortgage interest rate is obviously based on the higher use, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value of the parcel.

Section 23. Replacement Housing Payments- Incidental Relocation Expenses. The incidental expenses which may be paid are those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer.

(1) The type of incidental expenses eligible for payment shall include:

(a) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;

(b) Lender, Federal Housing Administration, or Veteran's Administration application and appraising fees;

(c) Loan origination or assumption fees that do not represent prepaid interest;

(d) Certification of structural soundness and termite inspection when required;

(e) Credit report;

(f) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for preparation of title insurance of a comparable replacement dwelling;

(g) Escrow agent's fee;

(h) State revenue or documentary stamps, sales on transfer taxes (not to exceed the costs for a comparable replacement dwelling); and

(i) Other costs as determined by the Transportation Cabinet to be incidental to the purchase.

(2)(a) An owner-occupant of 180 days or more who has a mortgage on the dwelling acquired and who places a mortgage on his replacement dwelling shall be reimbursed for the necessary and reasonable incidental expenses incurred when obtaining a mortgage on his replacement dwelling.

(b) An owner-occupant of 180 days or more who has no mortgage on the acquired dwelling, but who places a mortgage on his replacement dwelling shall not be reimbursed for the incidental expenses of obtaining his loan.

(c) An owner-occupant of less than 180 days, or a tenant-occupant of more than ninety (90) days who chooses to purchase a replacement dwelling may be reimbursed for eligible incidental expenses if they are included in the down payment. However, the total of the down payment and incidental expenses is limited to a maximum of \$5,250.

Section 24. Replacement Housing Payments - Rental Payments.

(1) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, if the displaced person:

(a) Actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and

(b) Has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year after the date he moves from the displacement dwelling if he is a tenant; or

(c) In the case of an owner-occupant, has rented or purchased and occupied decent, safe and sanitary dwelling within one (1) year of the later of the date he received final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or the date he moved from the displacement dwelling.

(2) The base monthly rental for the displacement dwelling shall be the least of the three (3) computations below:

(a) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement using either actual or fair market rent. For a tenant who paid little or no rent for the displacement dwelling, fair market rent shall be used unless it would result in a hardship due to his personal income or other circumstances; or

(b) Thirty (30) percent of the person's average monthly gross household income. If a person refuses to provide evidence of income or is a dependent, the base monthly rent shall be the average monthly cost for rent or utilities. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(c) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amount for shelter and utilities. The base monthly rental shall include any rent supplement supplied by others unless the supplement is to be discontinued upon vacation of the property.

(3)(a) To compute the rental assistance payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities or, if less,

the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the base monthly rent of the acquired dwelling as determined in subsection (2) of this section.

(b) Then the cabinet shall multiply that amount by forty-two (42) to determine the actual payment.

(c) For owner-occupants the cabinet shall use the actual or fair market rent instead of the base monthly rent when computing the payment amount.

(d) In determining the amount necessary to rent a comparable dwelling the Transportation Cabinet shall examine, if available, three (3) comparable rental properties.

(e) Only when the local housing market does not contain three (3) comparable rental properties, may the Transportation Cabinet determine the payment based on less than three (3).

(4) The disbursement of rental replacement housing payments may be in a lump sum payment, or in installments. The full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

Section 25. Replacement Housing Payments - Down Payment Assistance. (1) Down payment assistance may be given to a tenant-occupant of ninety (90) days or more who purchases a replacement dwelling.

(2)(a) A displaced person eligible for rental replacement housing payment under Section 24 of this administrative regulation may receive a down payment assistance payment not to exceed \$5,250.

(b) In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(c) If the rental assistance payment computed under Section 24 of this administrative regulation would be zero dollars, the displaced person is entitled to receive the \$5,250 for a down payment.

(3) A displaced person eligible to receive a replacement housing payment as a 180 or more day owner-occupant is not eligible for this payment.

Section 26. Replacement Housing Payment - Sleeping Room Tenant. A displaced person who has occupied a sleeping room for ninety (90) days or more and who is eligible to receive a replacement housing payment, may receive an amount not to exceed \$5,250 as a rent supplement, or to enable him to make a down payment on a replacement dwelling. The provisions of Sections 24 or 25 of this administrative regulation shall be followed.

Section 27. Mobile Homes - General. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall be applicable to owners or tenants of mobile homes.

(2) If it is determined that a sufficient portion of a mobile home park is taken that the remainder is not sufficient to continue the operation, and a mobile home in the remaining part of the park is required to be moved as a result of the project, the owner and any tenant shall each be considered a displaced person. A mobile home may be considered a replacement dwelling provided it is substantially a decent, safe and sanitary dwelling.

(3) The ownership or tenancy of the mobile home (not the land on which it is located) shall determine the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home or the mobile home site shall determine the occupant's status as a 180 day or ninety (90) day owner or tenant. The mobile home shall have been occupied on the same site (or in the same mobile home park) for the requisite 180 days or ninety (90) days to make the occupant eligible for a replacement housing payment or rent supplement.

(4) A nonoccupant-owner of a mobile home is eligible for an

actual cost moving expense payment.

(5) If the person is displaced from a mobile home park, a nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable park or if the Transportation Cabinet determines that it is necessary to pay the fee to effect relocation.

(6) There is no limit to the distance of the move of the displaced person. However, a relocation assistance moving expense payment shall be computed on a move of a distance of no more than fifty (50) miles, except when it is determined that the relocation cannot be accomplished within a fifty (50) mile radius. Beyond the fifty (50) mile radius, approval for a distance payment shall be limited to the nearest available mobile home site.

(7)(a) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling.

(b) If it is determined that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the cost of a comparable replacement dwelling shall be assumed to be:

1. The sum of the value of the mobile home;
2. The cost of any necessary repairs or modifications; and
3. The estimated cost of moving the mobile home to a replacement site.

(c) If a mobile home is not actually acquired, but the occupant is considered displaced under this administrative regulation, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he is a displaced person for the purpose of these procedures.

(d) If the owner is reimbursed for the cost of moving the mobile home under this administrative regulation, he is not eligible for a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(8) There may be other combinations of ownership of occupancy relating to mobile homes not covered in these procedures. In these cases, the Transportation Cabinet shall make every effort to treat the displaced person in a manner consistent with the other provisions of this section.

Section 28. Mobile Home Moving Expense Payments. (1)(a) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall also be applicable to owners and tenants of mobile homes.

(b) Displaced individuals or families occupying a mobile home may receive payment for the actual, reasonable expense of moving their personal property.

(c) If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home is reimbursable.

(d) If the owner chooses to move the mobile home, it shall be moved by a commercial mobile home carrier licensed by the Department of Vehicle Regulation.

(e) The owner may choose the mover, and receive reimbursement for the actual, reasonable expenses. Request for payment of moving expenses shall be supported by receipted bills.

(f) Prior to authorizing a move of a mobile home, the Transportation Cabinet shall determine:

1. The items of personal property to be moved, including the mobile home and any items stored in accessory buildings; and
2. Determine that the mobile home mover is a licensed commercial mobile home carrier and obtain from him an estimate of the moving costs.

a. This estimate shall include any necessary utility service connections.

b. If this estimate is not reasonable, the cabinet may approach another mobile home mover or renegotiate the price.

(2) If the mobile home is not acquired, but the mobile home

owner-occupant obtains a replacement housing payment under one (1) of the circumstances described in Section 29(2)(c) of this administrative regulation, the owner shall not be eligible for payment for moving the mobile home, but may be eligible for payment for moving personal property from the mobile home.

(3) However, the following expenses shall be eligible for an actual cost moving expense payment:

(a) The reasonable cost of disassembling, moving, and reassembling any attached appurtenance, such as a porch, deck, skirting, or awning; anchoring of the unit; and utility hookup charges; and

(b) The reasonable cost of repairs or modifications if a mobile home requires repairs or modifications so that it can be moved or made decent, safe and sanitary, and it is determined that it would be economically feasible to incur the additional expense.

(3) Arrangements may be made between the Transportation Cabinet, the displaced person, and the mover so that the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover.

(4) An application for moving expense payments may be submitted in advance of the move so that payment is made available immediately upon completion of the move. In some unusual circumstances, and with prior approval of the Transportation Cabinet, moving expense payments may be made prior to the actual move.

(5) If a mobile home is considered real property, acquired by the Transportation Cabinet and included in the appraised value of the site, and if the owner repurchases the mobile home from the Transportation Cabinet, the cost of moving the mobile home shall not be eligible for moving expense payments.

(6) If the landowner occupies the mobile home and the mobile home is acquired by the Transportation Cabinet or if a tenant-occupant of a mobile home is displaced, the displaced person shall move his personal property from his mobile home by one (1) of the following methods:

(a) The displaced person may elect to move his personal belongings by the use of a commercial mover as prescribed in Section 10(4) of this administrative regulation.

(b) The displaced person may elect to move his personal property from the mobile home according to the fixed-rate schedule set out in Section 10(5) of this administrative regulation. The room count of furniture shall be based on the actual number of furnished rooms. A small detached shed or building used to store such things as lawn mowers, lawn chairs, hoses, etc., shall be considered as an additional room, if the shed or building contains sufficient personality as to constitute a room.

Section 29. Mobile Home Replacement Housing and Rent Supplement Payments. (1) The replacement housing or rent supplement payment for a mobile home shall be computed in two (2) parts:

(a) The replacement housing or rent supplement payment for the mobile home shall be computed in accordance with the procedures set forth in Sections 16 and 19 through 26 of this administrative regulation.

(b) The replacement housing or rent supplement payment for the mobile home site shall be computed based on comparable sites, but the total payment shall be limited to the maximums established in this administrative regulation according to the displaced person's ownership or tenancy of the land.

(c) The sum of these two (2) parts shall not exceed the \$5,250 or \$22,500 limit set for rent supplement or replacement housing payments. The total of these two (2) parts shall not exceed \$22,500.

(2) A mobile home owner-occupant who has owned and occupied the mobile home for 180 days or more shall be eligible for a replacement housing payment not to exceed \$22,500 provided:

(a) The displaced person owns the displacement mobile home and occupied it on the displacement site at least 180 days immediately prior to the initiation of negotiations;

(b) The displaced person meets the other basic eligibility

requirements in Section 19 of this administrative regulation; and

(c) The Transportation Cabinet acquired the mobile home as real property, or the mobile home is not acquired by the Transportation Cabinet but the owner is displaced because it is determined that the mobile home:

1. Is not and cannot economically be made decent, safe and sanitary; or

2. Cannot be relocated without substantial damage or unreasonable cost; or

3. Cannot be moved because there is no available comparable replacement site; or

4. Cannot be relocated because it does not meet mobile home park entrance requirements.

(d) If the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(3) A displaced owner-occupant of 180 days or more of a mobile home and site who meets the provisions of subsection (2) of this section:

(a) Shall be eligible for replacement housing payments for the following specific items:

1. The additional costs necessary to purchase replacement housing in accordance with Section 19 of this administrative regulation;

2. The amount necessary to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing under the provisions of Section 22 of this administrative regulation; and

3. An amount to reimburse the owner for incidental expenses incurred in the purchase of replacement housing in accordance with Section 23 of this administrative regulation.

(b) Who is eligible for a replacement housing payment and who elects to rent is eligible for a rental replacement housing payment, not to exceed \$5,250.

(4) If the Transportation Cabinet acquires both the mobile home and site from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases replacement housing the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home and site equals the lesser of the amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site, or if a mobile home and site are not available, the cost of a conventional dwelling, and the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home and site or conventional dwelling in accordance with the provisions of Section 19 of this administrative regulation.

(b) If the owner elects to rent, the Transportation Cabinet shall compute the rental replacement housing payment by subtracting the fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental replacement dwelling, including estimated average monthly utilities, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and mobile home site or conventional dwelling, including the estimated average monthly utilities multiplied by forty-two (42).

(5) If the Transportation Cabinet from the owner-occupant of 180 days or more described in subsection (2) of this section acquires the site, but not the mobile home situated upon the site, and the mobile home is required to be moved, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement site, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home site equals the lesser of the amount the owner is required to pay for a comparable site, or the

amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home site;

(b) If the owner elects to rent a replacement site, the rental replacement housing payment shall be computed by subtracting the fair market rent including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To compute the actual payment the cabinet shall multiply that amount by forty-two (42).

(6) If an owner-occupied mobile home situated on a rental site is acquired from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement mobile home, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired the mobile home equals the lesser of the actual amount the owner is required to pay for a replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home, plus a site rental payment computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To determine the actual payment the Transportation Cabinet shall multiply that amount by forty-two (42). The owner of the mobile home may choose to purchase a comparable mobile home site as an alternative to renting a site. If so, to receive the replacement housing payment, the full amount of the payment shall be applied toward the purchase price of the replacement lot and related incidental expenses. Also, the displaced person shall purchase the lot and place his mobile home on the replacement lot. This payment shall be limited to \$5,250.

(b) If the owner elects to rent a replacement mobile home, the rent supplement payment shall be computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person pays for a rental mobile home and site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site including the estimated average monthly utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42) to compute the actual payment.

(7) If the Transportation Cabinet acquires the site where the owner-occupant of 180 days of a mobile home described in subsection (2) of this section rents the site but the cabinet does not acquire the mobile home, the replacement housing payment shall be determined as follows:

(a) If the owner of the mobile home elects to purchase a replacement site, the replacement housing payment shall be a down payment assistance payment not to exceed \$5,250 if the owner of the mobile home purchases and occupies the replacement site within one (1) year. The full amount of the payment shall be applied to the purchase of a replacement mobile home site and related expenses.

(b) If the owner of the mobile home elects to rent a replacement site, the rental replacement housing payment shall be determined by subtracting the actual or fair market rent including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental mobile home site including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable mobile home site including utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42).

(8)(a) A displaced owner-occupant of a mobile home who has

occupied for less than 180 days the mobile home on the site from which he is being displaced, and who is otherwise eligible under the provisions of Section 19 of this administrative regulation is eligible for a replacement housing payment not to exceed \$5,250.

(b) The replacement housing payment may enable him to make a down payment on the purchase of replacement housing in accordance with the provisions of paragraph (a) of this subsection and reimburse him for the actual expenses incidental to the purchase.

(c) If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraph (b) of this subsection. The payment is to be computed and disbursed in accordance with the provisions of Section 24 of this administrative regulation.

(d) When the cabinet is acquiring both the mobile home and site from the owner-occupant, the displaced person eligible for a rental replacement housing payment may receive a down payment assistance payment not to exceed \$5,250 only if the full amount of the payment is applied to the purchase price of the replacement dwelling and related incidental expenses. The amount for which he is eligible shall be limited to the amount he would receive if he were an owner-occupant of 180 days or more.

(e) If the Transportation Cabinet acquires the mobile home and site from the less than 180 days owner-occupant, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the mobile home and site including utilities as determined in by the cabinet from the amount the owner actually pays for a rental mobile home and site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site, including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall multiply this amount by forty-two (42).

(9) If the Transportation Cabinet acquires the site but not the mobile home from the owner-occupant described in subsection (2) of this section except that he had occupied the mobile home for less than 180 days, the replacement housing payment shall be determined as follows:

(a) If the owner purchases conventional replacement housing or purchases a site to which the mobile home is moved, the replacement housing payment shall be determined as in subsection 8(a) of this section.

(b) If the owner elects to rent replacement housing, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the acquired site, including utilities as determined by the cabinet from the amount the displaced person actually pays for a rental replacement mobile home site, including the estimated average monthly utilities, or if less, the amount determined by the Transportation Cabinet as necessary to rent comparable mobile home site including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall then multiply this amount by forty-two (42).

(10) A displaced tenant of a mobile home who has occupied for at least ninety (90) days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of Section 24(1) of this administrative regulation, is eligible for a replacement housing payment, not to exceed \$5,250. The rental replacement housing payment shall be determined in accordance with the provisions of Section 24 of this administrative regulation. If the displaced person elects to purchase a replacement dwelling, he shall receive a payment in accordance with Section 25 of this administrative regulation.

Section 30. Last Resort Housing. The last resort housing procedures of this section shall be implemented when it is determined that a Transportation Cabinet project cannot proceed to actual construction because comparable replacement sale or rental housing, within the monetary limits is not available and the housing cannot otherwise be made available. A person cannot be required to move

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from his dwelling unless at least one (1) comparable replacement dwelling is made available to the person.

(1) If comparable decent, safe and sanitary housing is not available, any decision to provide last resort housing assistance shall be justified either:

(a) On a case-by-case basis, during which consideration has been given to:

1. Availability of comparable housing in the area of the project;
2. Resources available to provide comparable housing; and
3. Individual circumstances of the displaced person; or

(b) It is determined that:

1. There is little, if any, comparable replacement housing available to a displaced person within an entire project area. Therefore, a case-by-case justification for last resort housing assistance is not necessary;

2. A project cannot be advanced to completion in a timely manner without last resort housing assistance; and

3. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(2) A displaced person shall not be deprived of any rights the person may have under KRS 56.610 to 56.760. A displaced person shall not be required, without the person's written consent, to accept a dwelling provided by the Transportation Cabinet under the procedures described in subsection (3) of this section in lieu of any acquisition payment or any relocation payment for which the person may be eligible;

(3) The methods of providing last resort housing include, but are not limited to:

(a) A replacement housing payment in excess of the limits set forth in Sections 19 and 24 of this administrative regulation. Rental assistance subsidy in last resort housing may be provided in installments or in a lump sum as determined by the Transportation Cabinet;

(b) Rehabilitation of or addition to an existing replacement dwelling;

(c) Construction of a new replacement dwelling;

(d) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may or may not be secured by the real property. The loan may or may not be interest free;

(e) The relocation and, if necessary, rehabilitation of a dwelling;

(f) The purchase of land or a replacement dwelling by the Transportation Cabinet and subsequent sale or lease to or exchange with a displaced person;

(g) Removal of barriers to the handicapped; and

(h) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

(4) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(a) Replacement housing based on space and physical characteristics different from those in the displacement dwelling;

(b) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate the individuals or families displaced from marginal or substandard housing with probable functional obsolescence; or

(c) For the displaced person who is ineligible for a rent supplement or a replacement housing payment (for example, a tenant of less than ninety (90) days or a person who occupies the property subsequent to the initiation of negotiation) when comparable rental replacement housing is not available at rental rates within the person's financial means. The housing provided shall be comparable housing. To determine if a tenant in this category is entitled to a replacement housing payment, the Transportation Cabinet shall subtract thirty (30) percent of the person's gross monthly household

income from the cost of a comparable replacement dwelling and multiply the difference by forty-two (42). There shall not be a prohibition against making direct payments to a displaced person under last resort housing. Each case shall be reviewed to determine if it is the best interest of the person or family. The payment may be made to a third party or in installments.

Section 31. Appeals. (1) A person may file a written appeal and request for hearing with the Transportation Cabinet in any case in which the person believes that the cabinet has failed to properly determine:

(a) His eligibility; or

(b) The amount of the payment required under the provisions of this administrative regulation.

(2) The Transportation Cabinet shall consider a written appeal regardless of form.

(3) The appeal shall be filed within sixty (60) days of the date of his written notice from the Transportation Cabinet of the cabinet's determination on the person's claim.

(4) A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.

(5) The administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B.

~~(a) The Secretary of the Transportation Cabinet shall appoint a hearing officer for the purpose of conducting the hearing and making a recommendation to the secretary with reference to the appeal.~~

~~(b) Technical rules of evidence shall not apply;~~

~~(c) The hearing officer shall be authorized to issue rulings regarding the competency, relevancy and materiality of the evidence to be presented at the hearing;~~

~~(d) A record of all evidence introduced at the hearing shall be made by the Transportation Cabinet.~~

~~(5)(a) The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal.~~

~~(b) A copy of this shall be made available to all parties concerned, including the person requesting the hearing and the attorney representing the Transportation Cabinet in this appeal procedure.~~

~~(c) They shall have twenty (20) days in which to comment on or object to the hearing officer's recommended decision. These comments or objections shall be presented in writing.~~

(6) ~~(7)~~ The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider:

(a) The hearing officer's recommended decision; and

(b) any written comments received from the involved parties in making his final ruling.

(8) If the full relief requested in the appeal is not granted, the Transportation Cabinet shall advise the person of his right to seek judicial review pursuant to the provisions of KRS Chapter 13B.

DON C. KELLY, P.E., Secretary

JERRY D. ANGLIN, Deputy Secretary and Commissioner

J.M. YOWELL, P.E., State Highway Engineer

RICHARD H. DETERS, Executive Director

APPROVED BY AGENCY: October 5, 1995

FILED WITH LRC: October 11, 1995 at 8 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 27, 1995 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 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

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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 November 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 November 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: This proposed amendment is likely to affect 8-10 relocation assistance computations each year. This will only affect those computations which must be revised.

(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. However, there should be very little, if any, change in cost. There are very few situations where this process is used.

(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. However, there should be no change in cost.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This change will have no effect on compliance, reporting, or paperwork requirements or upon competition.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be less paperwork for the cabinet.

(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: 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: No public comment hearing was held. However, no effect is anticipated.

(b) Kentucky: No public comment hearing was held. However, no effect is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The "no change" alternative was rejected because the existing process has proven cumbersome and creates problems in the administration of the relocation problem. The adoption of the administrative hearing procedures set forth in KRS Chapter 13B is mandated by state law.

(8) Assessment of expected benefits: The cabinet believes that it will be more equitable to the public and the cabinet when this change is made.

(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: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The entire administrative regulation is a tiering of the level of payments to relocated persons, businesses and farms.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 213, Uniform Relocation Assistance and Real Property Acquisition Action of 1970, PL 91-646 as amended. 49 CFR PART 24.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations are applicable to all property acquired using federal funds. The Federal Highway Administration left many parts of the assistance to the discretion of the individual states. The federal minimum standards relate to general relocation requirements, payments for moving and related expenses, replacement housing payments, and mobile homes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The Transportation Cabinet has made the program applicable to both state and federal projects.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law allows an agency to adopt the program for nonfederally funded projects as well as federally funded ones. In the instance of a highway construction project part federally funded and the remainder not, it is unfair to provide this benefit to others. The reasoning why part of the residents of a displaced neighborhood would receive extra funds from the state to make their relocation easier but the others wouldn't is impossible to explain to the participants.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers Division of Motor Vehicle Enforcement (Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.435, 49 CFR 107, 130, 171-180

STATUTORY AUTHORITY: KRS 174.410(2), 174.430(1), 49 CFR Parts 130, 171-180

NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435 relating to the transportation of hazardous materials by air or highway. House Bill 448 passed by the 1994 General Assembly repealed the requirement for a permit for transporters of hazardous material in Kentucky. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations

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adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) Title 49, Code of Federal Regulations, Part 107, effective October 1, 1995 [~~July 1, 1994~~]. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) Title 49, Code of Federal Regulations, Part 130 effective June 16, 1993. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) Title 49, Code of Federal Regulations, Part 171 effective October 1, 1995 [~~September 30, 1994~~]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) Title 49, Code of Federal Regulations, Part 172 effective October 1, 1995 [~~September 30, 1994~~]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;

(b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) Title 49, Code of Federal Regulations, Part 173 effective October 1, 1995 [~~September 30, 1994~~]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) Title 49, Code of Federal Regulations, Part 175 effective October 1, 1995 [~~October 1, 1993~~]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) Title 49, Code of Federal Regulations, Part 177, effective October 1, 1995 [~~October 1, 1993~~]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) Title 49, Code of Federal Regulations, Part 178 effective October 1, 1995 [~~September 30, 1994~~]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) Title 49, Code of Federal Regulations, Part 180, effective May 22, 1995 [~~September 30, 1994~~]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

~~[Section 2. (1) "Part II, Department of Transportation Research and Special Programs Administration: Cargo Tanks, Miscellaneous Requirements: Final Rule" published in the November 3, 1994 Federal Register is incorporated by reference as a part of this administrative regulation. This document contains amendments to 49 CFR Part 171, 173, 178, and 180 relating to requirements for the manufacture, qualification, and maintenance of cargo tank motor vehicles. These changes shall be implemented January 5, 1995 and shall govern cargo tank motor vehicles used for the transportation of hazardous materials. Compliance with the changes is authorized on the effective date of this administrative regulation if prior to January 5, 1994.~~

~~(2) The material incorporated by reference may be viewed, copied, or obtained from the Staff Assistant to the Transportation Cabinet Secretary, Room 1003, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4890. The working hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.]~~

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: October 9, 1995

FILED WITH LRC: October 13, 1995 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 27, 1995 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing 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 November 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 November 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 November 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, FAX - (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All transporters of hazardous materials by highway or air 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 hearing was not requested. However, there is no known cost of living or employment impact expected in Kentucky as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing was not requested. However, there is no known cost of doing business impact expected in Kentucky as a result of the changes to this administrative regulation.

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

1. First year following implementation: No change as a result of the changes to the administrative regulation.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Highway Administration funding through the Motor Carrier Safety Assistance Program Grant.

(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. However, no

economic impacts are anticipated.

(b) Kentucky: Same as above

(7) Assessment of alternative methods; reasons why alternatives were rejected: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by US DOT. A motor carrier should not be cited for complying with the new federal 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: There should be an added measure of safety in the transportation of hazardous materials, particularly on public highways.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly, since the list of hazardous materials covered under this administrative regulation has been revised to include several additional materials, they will now have to be packaged, labeled, shipped and placarded in accordance with the safety procedures established in this administrative regulation. There should be fewer air or highway problems with the transportation of these hazardous materials if the administrative regulation is promulgated.

(c) If detrimental effect would result, explain detrimental effect: Without the safest and most up-to-date shipping and transportation procedures being implemented and enforced, it is possible that highway crashes could cause more environmental problems due to spills, leakage, or explosions.

(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 proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last several months. The changes of significance are as follows:

1. The U.S. Department of Transportation (USDOT) revised its regulation for the Transportation of Infectious Substances to provide relief for certain shipments of regulated medical waste that conformed to other federal agency regulations and allow certain small quantities of regulated medical waste to be transported by aircraft.

2. USDOT published its Hazardous Material Transportation Enforcement Civil Penalty Guidelines. This action provides the regulated community and the general public with guidance as to the factors USDOT considers in its HAZMAT penalty assessment process.

3. USDOT amended the "list of hazardous substances and reportable quantities" which appears in the appendix to the hazardous materials regulations in 49 CFR Parts 171 and 172. Federal law requires that the USDOT regulate through these CFRs all hazardous substances designated by the Environmental Protection Agency. EPA recently amended their list; therefore, the list of hazardous materials relating to transportation also had to be amended.

4. USDOT reconsidered its established requirements for the construction, maintenance and use of intermediate bulk containers for the transportation of hazardous materials. These changes align requirements for intermediate bulk containers with revisions in the 8th Edition of the U.N. Recommendations on the Transport of Dangerous Goods and the 27th Revision of the Organization's International Maritime Dangerous Goods Code. The remainder of the changes are technical or clarifying in nature.

(11) TIERING: Is tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous

material being transported.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171 - 173, 177 and 178.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 130, 171 - 173, 177, 178, and 180. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 107 relating to the Federal Highway Administration program procedures.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a. The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;

b. Establishes the emergency response information requirements for each transporter of a hazardous material;

c. Defines the general requirements for shipping and packaging of each type of hazardous material;

d. Defines the unacceptable hazardous material shipments on a highway;

e. Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;

f. Establishes shipping container specifications for the transportation of hazardous materials;

g. Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials; and

h. Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations. Therefore 49 CFR Part 175 relating to the carriage of hazardous materials by aircraft has also been adopted even though the federal incentive program does not include this part.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations.

TRANSPORTATION CABINET
Department of Highways
Permits Branch
(Amendment)

603 KAR 4:035. Logo signs placement along fully controlled access highways.

RELATES TO: KRS 177.0734 through 177.0738

STATUTORY AUTHORITY: KRS 177.0734 through 177.0738

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

Section 1. Definitions. (1) "Business location" means a place of business where more than one (1) motorist service is available.

(2) "Business sign" means a separately attached sign mounted on the specific information panel to show the name, brand name or trademark of a qualified motorist service available near the interchange.

(3) "Clear zone" means the area between the edge of the driving-lane of a fully controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway.

(4) "Combination specific information sign" means a specific information sign with more than one (1) of the services "gas", "food", "lodging", "camping", or "tourist activities" listed on it.

(5) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 1:101 to administer the specific information signing program in Kentucky. The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the specific information panels and installation and removal of business signs.

(6) "Contract year" means July 1 through the following June 30.

(7) "Cover" means place a protective shield over a business sign to prohibit viewing of the sign.

(8) "Double exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.

(9) "Fully controlled access highway" means a highway, limited to interstate highways and state parkways, that gives preference to through traffic and has access only at selected public roads and that has no at-highway grade crossings or intersections.

(10) "Highway guide sign" means an official highway sign which is erected by the Department of Highways to give directions; to furnish advance notice of the approach to intersections or interchanges; to direct drivers into appropriate lanes; to identify routes, and directions on those routes; to show distances to destinations; to indicate access to general motorist services, rest, scenic and recreational areas; and to provide other information of value to the traveling public.

(11) "Interchange" means a junction of two (2) or more highways

by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams.

(12) "Intersection" means a junction of two (2) roads at the same grade level.

(13) "Logo" means a business sign.

(14) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(15) "Primary motorist service" means a business location which gives precedence to one (1) motorist service over any other motorist service available at that business location.

(16) "Ramp sign" means a sign that is placed along the ramp or at the ramp terminal for service facilities which have business logos displayed along the main roadway.

(17) "Secondary motorist service" means one (1) or more motorist services available at a business location which are subordinate to the primary motorist service.

(18) "Single exit interchange" means a grade-separated crossing of roadways having one (1) mainline off-ramp per direction to provide access to the crossroad.

(19) "Specific information panel" means an official sign placed within the highway right-of-way with the words "GAS," "FOOD", "LODGING", "CAMPING", or "TOURIST ACTIVITIES" or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel.

(20) "Tourist activities" means activities or locations that are natural phenomena; historic, cultural, scientific, educational and religious sites; or areas of natural beauty or naturally suited for outdoor recreation. These activities are deemed to be in the interest of the traveling public.

(21) "Trailblazing sign" means a sign similar to a ramp sign used on nonfully controlled access highways from which a service is available to indicate the direction to the service.

Section 2. General Provisions. (1) The Commissioner, Department of Highways, shall authorize the placement of specific information panels with business signs within the right-of-way of fully controlled access highways.

(2) The Department of Highways shall control the erection and maintenance of panels and signs in accordance with the "Manual on Uniform Traffic Control Devices" (MUTCD) as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation.

(3) The Department of Highways shall demonstrate the use of the "tourist activities" specific service sign on the following highways:

(a) I-24 along its entire length;

(b) I-65 from the Tennessee state line to the Bullitt-Jefferson County line; ~~(through Exit 94 north of Elizabethtown.)~~

(c) I-64 from Shelbyville to Ashland; and

(d) William H. Natcher Parkway, formerly the Green River Parkway, along its entire length.

Section 3. Application and Contracts for Specific Information Signs. (1) Application for a business to place a logo relating to gas, food, lodging or camping on a specific information panel shall be on "Application for Highway Logo Signing" forms prepared by the Kentucky Logo Sign Group, Inc. in November 1993. This form is incorporated by reference as a part of this administrative regulation.

(2) Application for a business to place a logo relating to tourist activities on a specific information panel shall be on "Application for Highway Tourist Activity Logo Signing" forms prepared by the Kentucky Logo Sign Group, Inc., in May, 1994. This form is incorporated by reference as a part of this administrative regulation.

(3) The notice by the business to the Department of Highways' contractor of the number, type and placement of each logo sign shall be on "Logo Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorpo-

rated by reference as a part of this administrative regulation.

(4) The contract to be entered into between the participating business and the Department of Highways' contractor shall be the "Highway Logo Program Agreement" form prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. Addenda to this form may be included in the contract where appropriate. This form is incorporated by reference as a part of this administrative regulation.

(5) All forms incorporated by reference as a part of this administrative regulation may be viewed, copied or obtained from the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. Its telephone number is 1-800-469-5646. The forms may also be viewed, copied, or obtained from the Division of Traffic, 501 High Street, Mail Code 1-3, Frankfort, Kentucky 40622. Its telephone number is (502) 564-3020. Its hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

Section 4. Location and Erection of Specific Information Panels.

(1) A specific information panel bearing separately attached business signs shall not be erected less than 800 feet (244 meters) in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific information panel shall be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any other highway guide signs in existence or proposed for that area.

(3) A specific information panel shall not be erected if there is insufficient space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific information panel.

(4) A specific information panel shall not be erected at an interchange or intersection which intersects another limited access facility.

(5) A specific information panel shall not be erected at any interchange or intersection which does not have a convenient reentry in the same direction of travel.

(6)(a) Not more than one (1) specific information panel for "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ACTIVITIES" shall be erected in each direction for an interchange or intersection.

(b) Not more than four (4) specific information panels shall be erected in one (1) direction of travel for an interchange or intersection.

(c) In one (1) direction of travel, the successive panels shall be erected in the order of "TOURIST ACTIVITIES" or "CAMPING," "LODGING," "FOOD," and "GAS" unless a combination specific information sign is erected in accordance with Section 5(10) or (11) of this administrative regulation.

(d) At interchanges with insufficient space available in a single direction for four (4) specific information panels, or at interchanges with requests for all five (5) type services, service signing preference shall be in the order "gas," "food," "lodging," "camping," and "tourist activities," with "gas" having the highest priority.

(7) The specific information panels shall be located to:

(a) Take advantage of natural terrain;

(b) Have the least impact on the scenic environment; and

(c) Avoid visual conflict with other signs within the highway right-of-way.

(8) Unprotected sign panel supports located within the clear zone shall be of a breakaway design.

Section 5. Interchange Specific Information Panel Composition.

(1) A specific information panel shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10)-inch (254-millimeter) capital letters.

(4) All numbers shall be ten (10) inches (254 millimeters) in height.

(5) The size of the specific information panel shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific information panel.

(7)(a) For single exit interchanges, a standard full-size specific information panel shall accommodate a maximum of six (6) business signs.

(b) In instances when the number of businesses does not warrant a full-size panel, a half-size or combination panel may be used.

(8) If service facilities are not visible from a ramp terminal, supplemental "GAS," "FOOD," "LODGING," "CAMPING" or "TOURIST ACTIVITIES" logos shall be placed along the ramp or at the ramp terminal with a directional arrow and mileage (kilometers) to the service.

(9)(a) For double exit interchanges, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit.

(c) Each section shall accommodate a maximum of three (3) business signs for each service per exit.

(d) If a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information panel may be omitted or a single exit interchange sign may be used.

(10) Business signs for two (2) types of services may be displayed on the same combination specific information sign under the following conditions:

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange;

(b) Up to three (3) business signs may be displayed for each type of service in combination on a panel;

(c) If four (4) business signs are displayed for one (1) type of service on a combination specific information sign, no more than two (2) business signs for the other type of service shall be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective business signs.

(e) If tourist activities is one (1) of the types of services to be combined, it shall only be combined with camping.

(11) Business signs shall not be combined on a panel as described in subsection (10) of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display more than a total of six (6) business signs for the two (2) types of services displayed in combination;

(12)(a) Except at unnumbered exits, the exit number shall be displayed above the names of the types of services; and

(b) At unnumbered exits, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the names of the types of services.

Section 6. Ramp Signs. (1) At single-exit interchanges, exit ramp signs shall be installed except that the logos for facilities visible from the ramp terminal may be omitted.

(2) Business signs on ramp signs shall be duplicates of the corresponding logos installed along the main roadway, but reduced in size.

(3) Ramp signs shall include distances to the service facilities. Directions shall be indicated by arrows.

(4) Ramp signing may be used on ramps at double-exit interchanges.

Section 7. Business Signs. (1) Each business sign shall have a legend and border. However, if the business identification symbols or trademarks are used alone for a business sign, the border may be

omitted.

(2) Each business sign on the specific information panel shall be contained within a forty-eight (48)-inch (1219.2-millimeter) wide and thirty-six (36)-inch (914.4-millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral legend shall be in proportionate size.

(5) A message, symbol or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between business signs on specific information panels shall not exceed eight (8) inches (203.2 millimeters) and twelve (12) inches (304.8 millimeters), respectively.

(7) The required reflectivity, material composition, and adhesiveness of the business signs are set forth in the "LOGO PROGRAM SPECIFICATIONS" form 99-133 last revised by the Kentucky Transportation Cabinet in April, 1991. This form is incorporated by reference as a part of this administrative regulation.

(8) If a business ceases to exist or is not in operation for thirty (30) days, the business sign shall be immediately covered or removed as circumstances of each closing or cessation of business dictate.

(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. Businesses of this type shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs.

(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the business sign.

(11)(a) Descriptive advertising words, phrases or slogans shall not be allowed on a business sign; i.e., "Open 24 Hours," "Joe's 24-Hour Market," "Free Coffee," "Credit Cards Accepted," etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a business sign; i.e., "hotel," "motel," "inn," "lodge," "restaurant," "cafe," "cafeteria," "diner," or others with a similar meaning.

(c) The word "Diesel" on a "GAS" business sign shall be permitted.

(12) If there is more than one (1) eligible business at an interchange with the same business symbol, brand, trademark or logo, more than one (1) business symbol, brand, trademark or logo with the same design may be placed on a specific information panel or on a ramp sign to indicate the distances to the individual businesses.

Section 8. Business Criteria and Eligibility. (1) In the absence of adequate motorist service business signs to fill a specific information panel with primary motorist service signs, secondary motorist service business signs may be allowed on those unfilled panels.

(2) If a space is not available for the primary motorist service, a secondary motorist service may be considered if space is available on the specific information panel for that type of service.

(3) Secondary motorist services shall not be considered until all businesses with a primary motorist service have been allowed an opportunity to have their business signs placed on the specific information panel pertaining to that type motorist service.

(4) In selecting secondary services, the same criteria as required for primary motorist services shall be used to determine their qualification for a business sign.

(5)(a) A business within a three (3) mile (4.83 kilometer) limit in any direction from the centerline of a fully controlled access road interchange shall have first priority to place signs on information panels.

(b) If within that three (3) mile (4.83 kilometer) limit and adequate number of services of the type being considered are not available,

second priority shall be an additional three (3) miles (4.83 kilometers).

(c) Priority shall be extended in three (3) mile (4.83 kilometer) increments until an adequate number of services of the type being considered are available or fifteen (15) miles (24.15 kilometers) is reached.

(d) A business further than fifteen (15) miles (24.15 kilometers) from the interchange shall not be eligible to qualify for placement of a business sign. However, any business at a distance greater than fifteen (15) miles (24.15 kilometers) from the interchange with a business sign in place on January 1, 1994, may continue to display the business sign until the business fails to meet another criterion of this administrative regulation.

(6) A business with one (1) or more advertising devices in violation of KRS 177.830 through 177.890 on any route controlled by this statute or in violation of 603 KAR 3:080 shall not be eligible to qualify for a business sign until all violations have been removed.

(7) A business with one (1) or more advertisements on signs which are in violation of KRS 177.830 through 177.890 or 603 KAR 3:080 shall not be eligible to qualify for a business sign until all violations have been removed.

(8) An activity which is identified at an interchange by a guide sign pursuant to Chapter 2F of the "Manual on Uniform Traffic Control Devices":

(a) May also be identified with a "TOURIST ACTIVITIES" logo;

(b) Shall have a lower priority for eligibility than any other activity which is eligible for a "TOURIST ACTIVITIES" logo.

Section 9. Requirements for Obtaining Business Signs. A motorist service business located at, or conveniently accessible from, an interchange or intersection shall be eligible for placement of a business sign on a specific information panel if it qualifies under the following conditions:

(1) Each business shall offer written assurance that it conforms with all applicable laws and administrative regulations concerning the provision of public accommodations with regard to race, religion, color, sex, age, disability, or national origin.

(2) To qualify for a "GAS" business sign, a business shall:

(a) Be in operation seven (7) days a week, and continuously open for sixteen (16) hours a day; and

(b) Have motor vehicle fuel, oil, water, drinking water, restroom facilities, and a telephone.

(3) To qualify for a "FOOD" business sign, a business shall:

(a) Be licensed in accordance with KRS Chapter 219;

(b) Be in continuous operation to serve three (3) meals a day, seven (7) days a week;

(c) Have a seating capacity for a minimum of six (6) guests at sit-down, eat-in service; and

(d) Have a telephone.

(4) To qualify for a "LODGING" business sign, a facility shall:

(a) Be licensed in accordance with KRS Chapter 219;

(b) Have a minimum of two (2) rooms available for sleeping accommodations; and

(c) Have a telephone.

(5) To qualify for a "CAMPING" business sign, a facility shall:

(a) Be licensed in accordance with KRS Chapter 219; and

(b) Have a minimum of ten (10) parking accommodations which have modern sanitary facilities, and drinking water.

(6) To qualify for a "TOURIST ACTIVITIES" business sign, a facility shall:

(a) Be an activity or location that is one (1) or more of the following:

1. Natural phenomena;

2. Historic site;

3. Cultural site;

4. Scientific site;

5. Educational site;

- 6. Religious site;
- 7. Area of natural beauty; or
- 8. Area naturally suited for outdoor recreation.
- (b) Maintain regular hours for that type of establishment;
- (c) Be licensed in accordance with KRS Chapter 219, if applicable;

- (d) Have restroom facilities;
- (e) Have drinking water available;
- (f) Have an on-premise or nearby public telephone; and
- (g) Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces.

(7)(a) Qualifying businesses nearest to the interchange or intersection shall receive preference in the selection process.

(b) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period. Distance from the interchange shall only be considered in determining priority after the business hours have been considered.

(c) If a new qualifying business comes into existence nearer the interchange or intersection than one which already has a business sign displayed on a fully utilized panel, the new business may have its business sign displayed at the beginning of the next contract year. The business farthest from the interchange shall have its business sign removed at the end of the contract year if the closer business has applied to have its business sign displayed and has been approved for the program.

(d) A qualifying business or activity which has been identified on an official highway guide sign shall have a lower priority to have its business sign displayed than any other qualifying business or activity.

(8)(a) The qualifying business shall pay to the department's contractor an annual fee of \$600, in advance, for each business sign placed on the fully controlled access highway for gas, food, and lodging and ~~tourist activities~~ and \$300 for camping and tourist activities.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first lease is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis with each portion of a month the business sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee guarantees that the business sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of their agreement with the Department of Highways' contractor.

(9) If a sign or signs for a business is removed or covered for any reason, a fee of \$100 shall be charged for the reinstallation or uncovering of the sign for each business at each interchange.

(10) The qualifying business shall be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs.

(11) A business sign shall not be displayed which:

- (a) Would misinform the traveling public; or
- (b) Is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall provide a new or renovated business sign.

Section 10. Trailblazing Signs For Campgrounds. (1) Only those campgrounds within fifteen (15) miles (24.15 kilometers) of the centerline of a fully controlled access highway shall be eligible for new trailblazing signs.

(2) Only one (1) specific service trailblazing sign shall be erected for each business with a logo. This sign shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the business is visible from a point on the fully controlled access highway within 300 feet (91.5 meters) prior to intersection.

Section 11. Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled access road and the center line of a nonlimited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service.

Section 12. Business Sign Contract. (1)(a) A business sign contract between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a business sign.

(b) Each business sign and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating business shall be cause for the revocation of a business sign contract.

(d) If the contract is revoked for cause, the prepaid fees for a contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a contract, business, or business sign does not comply with the requirements of this administrative regulation, the Department of Highways' contractor shall notify the business in writing of the violation.

(3) If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the business signs.

Section 13. Appeal to the Commissioner of Highways for Exemption. (1) The Commissioner of Highways may grant an exemption to a business from the necessity of complying with any of the requirements set forth in this administrative regulation provided:

(a) It is determined by the commissioner that the exemption is in the public interest;

(b) The business conforms to the Federal Highway Administration standards for specific information signs; and

(c) That business which conforms to all the requirements set forth in this administrative regulation shall be given a preference over a business not conforming to all of the requirements in qualifying for placement of a business sign on a specific information panel.

(2) Any request for an exemption by a business to the Commissioner of Highways shall be filed in the form of an appeal as prescribed for in Section 15 of this administrative regulation.

Section 14. Encroachment Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new specific service sign proposed to be erected or removed from state-owned right-of-way.

Section 15. Appeal of Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner, Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3) Upon receipt of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

~~(4) The hearing and subsequent procedures shall be conducted in accordance with the provisions of KRS Chapter 13B. [The hearing examiner shall schedule a date for the hearing as soon as the schedules of the parties needed at the hearing allow provided that the time shall not exceed sixty (60) days after receipt of the request for hearing.]~~

~~(5) The hearing shall be recorded.~~

~~(6) The rules of evidence shall not apply.~~

~~(7)(a) The hearing examiner shall prepare and submit his report with a recommendation within sixty (60) days of the hearing.~~

~~(b) The report and recommendation shall be submitted to the Commissioner of Highways with copies served to the party which requested the hearing.~~

~~(8) Any party to the hearing may within twenty (20) days file with the Commissioner of Highways his exceptions to the report and recommendation of the hearing examiner.~~

~~(9) The commissioner shall within ten (10) days of receiving the exceptions and within thirty (30) days of receiving the report and recommendation of the hearing examiner issue an official order setting forth the final action of the Department of Highways.]~~

J.M. YOWELL, P.E., State Highway Engineer

JERRY ANGLIN, Deputy Secretary/Commissioner of Highways

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: September 28, 1995

FILED WITH LRC: October 13, 1995 at 9 a.m.

PUBLIC COMMENT: A public comment hearing will be held on this administrative regulation on November 27, 1995 at 1:30 p.m., local prevailing time in the 4th Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets (501 High Street), Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by November 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. The party requesting the transcript will be responsible for paying the cost of its preparation. 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 only be accepted until November 22, 1995. If you have a disability for which the Transportation Cabinet needs to make an accommodation, please contact Sandra G. Pullen by November 22, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All travelers using Kentucky's interstate highways and parkways as well as the 800 businesses which are eligible to and choose to purchase a logo sign.

(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, but the amendment to the administrative regulation should make no changes.

(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.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There is a 50% reduction in the cost of "Tourist Attraction" logos, making them easier for small businesses to obtain.

1. First year following implementation: Same

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Reduction in the revenue anticipated to be collected from the "Tourist Attraction" fifth legend logo.

1. First year: Less than \$5000 per year.

2. Continuing costs or savings: Same

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: Fees generated from the subscribers to the Logo program.

(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 the reason the fee was lowered was that so many of the small tourist attractions felt that they did not have sufficient funds to purchase the logo. Kentucky is doing the fifth legend tourist attraction logo on an experimental basis with FHWA. We did not want the experiment to fail because of the cost of the program.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative in regard to the fee structure was rejected because both the Transportation and Tourism Cabinets want the experiment on the "tourist attraction" fifth legend logo to succeed. The Tourism Cabinet believes that a reduction of the fee will produce more participation in the program.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The benefits of the reduction in the fees on the "tourist attraction" fifth legend logo will be reaped by the small tourist-oriented businesses who will now be able to participate in the logo program.

(11) TIERING: Is tiering applied? Tiering was applied by allowing different eligibility criteria between the extremely rural areas and the more populous areas. In addition, there are different eligibility criteria for the different services eligible to purchase logo space.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices". Logo signs are included in the Manual. However, the

primary requirement beyond limiting the placement, size, color and services listed, is that each state choosing to have a logo sign program, have its policies approved by the Federal Highway Administration.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative 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 standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
(Amendment)

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160(1)(b) requires that the Kentucky Board of Education [State Board for Elementary and Secondary Education] promulgate administrative regulations governing the acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires districts to submit district technology plans which describe their unmet technology need. KRS 157.655 stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the state board. Based on review of the unmet technology need in district technology plans, it has been determined that full implementation of KETS cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. Therefore, this administrative regulation is promulgated to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

Section 1. Definitions. As used in this administrative regulation, unless the context requires otherwise:

(1) "Department" means the Kentucky Department of Education.

(2) "District technology plan" means the plan developed by the local school district and the Department of Education and approved by the Kentucky Board of Education [State Board for Elementary and Secondary Education].

(3) "Kentucky Education Technology System" or "KETS" means the statewide system set forth in the technology master plan issued by the Kentucky Board of Education [State Board for Elementary and Secondary Education] with the recommendation of the Council for Education Technology and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System as developed by the Council on Education Technology and approved by the Kentucky Board of Education [State Board for Elementary and Secondary Education] and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan,

needed to achieve the capabilities outlined in the approved technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education [State Board for Elementary and Secondary Education] as part of the state review and assistance calculation process, as provided by the master plan.

Section 3. Reducing Unmet Need. ~~[(4)]~~ In categories unmet technology need as provided in the KETS Master Plan for Education Technology, districts shall limit procurements to those which will reduce unmet technology need until the district's unmet technology need no longer exists.

~~[(2) To assist districts in selecting technology which will reduce the unmet technology need, the Department of Education shall develop suggested procurement guidelines for equipment, software, and services.]~~

Section 4. Alternative Technology. Local school districts shall not be precluded from proposing alternative technologies in the local technology plan, particularly when the technology is proposed to achieve innovation.

Section 5. The KETS Master Plan for Education Technology, dated October 4, 1995 [November 4, 1993], is hereby incorporated by reference and may be obtained from the Office of Education Technology, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. - 4:30 p.m.

WILMER S. CODY, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 6, 1995

FILED WITH LRC: October 9, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 25, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Linda Pittenger

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None.

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

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

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

competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
 - (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (10) Any additional information or comments: None
 - (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Amendment)

702 KAR 3:245. School council allocation formula: Kentucky Uniform School Financial Accounting System.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: KRS 160.345(8) mandates that the Kentucky [State] Board of [for Elementary and Secondary] Education adopt a formula by administrative regulation which guides the way in which school district funds shall be allocated to each school council. This administrative regulation is designed for use by local school districts utilizing the Kentucky Uniform Financial Accounting System per 702 KAR 3:120. [702 KAR 3:240 is no longer required because it is being replaced by 702 KAR 3:245.]

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority.

(2) "Instructional supplies and ~~[] materials, travel, and equipment~~" means items that are consumed or worn out in the instructional process to include [the following codes, as set forth in the "Kentucky School Financial Accounting System," which is incorporated by reference in 702 KAR 3:120]:

- (a) Library books [~~codes: 251.01, 251.04, 252.01, 252.04;~~

- (b) Periodicals and newspapers [~~codes: 253.01, 253.04, 254.01;~~
- (c) Library supplies [~~codes: 255.01, 255.03, 256.01, 256.03;~~
- (d) Audio visual material and equipment [~~codes: 257.01, 257.04, 258.01, 258.04;~~
- (e) Supplementary books [~~codes: 263.01, 263.04, 264.01, 264.04;~~
- (f) Reference materials;
- (g) Instructional software; and
- (h) ~~[(f)]~~ Teaching supplies to include paper products. [~~codes: 265.01, 266.01;~~
- (3) "~~[(g)]~~ Instructional equipment" means initial or additional furniture, fixtures, and equipment for instruction which may be purchased, leased, or rented. "Instructional equipment" shall not mean computer laboratories, or the initial inventory of a new school plant. [other than computer laboratories—codes: 231, 741.01, 871.01, 1272; and]
- (4) "~~[(h)]~~ Instructional travel" means travel for all personnel and their assistants, including travel in connection with everyday instructional activities and travel to conventions, meetings and workshops. [~~code: 267.~~

"Instructional supplies, materials, travel, and equipment" shall not mean technology related expenditures for computer laboratories, the initial inventory of a new school plant, and any one (1) time expenditures that the district made to address specific school needs.]

(5) ~~[(3)]~~ "District average teacher's salary" means the total of all teacher salaries for 185 days in noncategorical programs in the district divided by the number of teachers in the noncategorical programs in the district.

Section 2. The local school district shall provide to school councils established by January 30 an allocation for the next budget year by March 1 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils by excluding the proposed district-wide expenditures for the following areas from the draft district budget:

- (1) The 100 Expenditure Series, Administration.
- (2) Any instructional service provided to all schools from the district level or for "categorical programs" of the 200 Expenditure Series, Instruction, including exceptional children services and itinerant teachers.
- (3) The 300 Expenditure Series, Attendance, except for noncategorical school-based employees and specified supplies.
- (4) The 400 Expenditure Series, Health Services, except for noncategorical school-based employees and specified supplies.
- (5) The 500 Expenditure Series, Transportation.
- (6) The 600 Expenditure Series, Operation of Plant, except for noncategorical school-based employees and specified supplies [personnel assigned to schools].
- (7) The 700 Expenditure Series, Maintenance of Plant, except for funds set aside in code 741.01 for replacement of instructional equipment at the school level. Any portion of 741.01 used for instructional service provided on a district level to all schools or paid for by categorical programs may also be excluded.
- (8) The 800 Expenditure Series, Fixed Charges, except for fringe benefits for noncategorical personnel assigned to schools.
- (9) The 900 Expenditure Series, School Food Services.
- (10) The 1100 Expenditure Series, Community Services.
- (11) The 1200 Expenditure Series, Capital Outlay, except for the funds [that may be] set aside in an allocation for new instructional equipment. Any portion of [and] code 1272 used for instructional equipment provided on a school level to all schools for categorical programs, furnishing new school buildings, or for Kentucky Education Technology System (KETS) matching funds may also be excluded. [designated for each school.]

- (12) The 1300 Expenditure Series, Debt Service.
- (13) The 1400 Expenditure Series, Below the Line.
- (14) All payments for extra duty and extended employment in all codes.

Section 4. Allocation for Certified Staff. (1) A board staffing policy or guideline shall be established to determine the number of allocated positions for each school. To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in paragraph (a) of this subsection that are generated by the local board certified staffing policy.

(2) Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action. [Local boards shall establish a certified staffing policy to determine the allocation of certified staff to local schools.]

(2) To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in subsection (1)(a) that are generated by the local board certified staffing policy.]

(3) Funds for positions allocated in subsection (1) of this section shall be [allocated] based on the previous year's actual 185 day salary and associated fringe benefits except sick, personal, or emergency leave adjusted by changes in rank, additional year of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary and associated fringe benefits except sick, personal, or emergency leave adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the certified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 5. Allocation for Classified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action. [Local boards shall establish a classified staffing policy to determine the allocation of classified staff to local schools.]

(2) Funds shall be provided for all school based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any district-wide increase.

(3) Funds shall be allocated for fringe benefit amounts except for sick, personal, or emergency leave for each classified staff member.

(4) Funds for new or vacant positions shall be based on ninety-five (95) percent of the district's average classified salary for that personnel job class and associated fringe benefits except for sick,

personal, or emergency leave for noncategorical staff adjusted for any district-wide increase.

(5) If the actual salary of new classified personnel is less than ninety-five (95) percent of the classified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 6. Instructional Supplies, Materials, Travel, and Equipment. (1) For instructional supplies, materials, travel, and equipment school councils shall receive a minimum [an] allocation of three and one-half (3 1/2) percent of the statewide guaranteed base funding level for Support Education Excellence in Kentucky (SEEK) based on prior year final average daily attendance. [based on the prior year district average expenditure adjusted by the current year's percent change in Support Education Excellence in Kentucky (SEEK) funding for each pupil based on the projected full-time equivalent enrollment.]

(2) The amount generated in subsection (1) of this section shall be adjusted [utilizing the enrollment data] at the end of the second school month for changes in average daily attendance and projected funding for SEEK. Adjustments prior to the end of the second school month for the 1995-96 school year shall use enrollment data and apply to the original allocations made by March 1, 1995. Subsection (1) of this section shall not apply for the 1995-96 school year.

(3) Allocations under subsections (1) and (2) of this section shall not include funds for operating expenses, including utilities, or for health and safety requirements of schools.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed in one (1) of the following manners:

(a) An amount per prior year final average daily attendance [projected full-time equivalent enrollment];

(b) Based on pupil needs identified by school councils and [ae] designated by the local school board. Money provided under this subsection shall be used only for the needs identified by the council and designated by the board; [ae]

(c) A combination of subsections (a) and (b) of this section.

(2) An adjustment may be made to allocations under subsection (1) of this section at the end of the second school month for changes in average daily attendance and projected funding for SEEK.

(3) [2] If Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. Nothing in this administrative regulation shall prohibit the district from providing funds to school councils in excess of the allocation amounts generated by Sections 4, 5, and 6 of this administrative regulation or other operational and capital outlay items.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budgets. The district board of education shall develop allocation procedures for professional development funds pursuant to KRS 160.345(8).

Section 10. No school council allocation by the district shall result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

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Section 11. Nothing in this administrative regulation shall prohibit districts from passing on to school councils any reduction in state and local revenues.

Section 12. The Kentucky Board of Education may approve requests from local school districts annually to use an alternative formula to allocate funds to schools. Local school districts requesting approval to use an alternative process shall submit written documentation that the formula would generate funding equal to or greater than the amount provided to school councils under Section 3 of this administrative regulation. All requests shall be received by the Division of Finance by October 1 preceding the allocation year. Any alternative process approved by the Kentucky Board of Education shall be subject to subsequent review.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody
Commissioner of Education

Joseph W. Kelly, Chairman

APPROVED BY AGENCY: October 6, 1995

FILED WITH LRC: October 9, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 districts.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

(Amendment)

704 KAR 20:510. Probationary certificate ~~[Recruitment plan]~~ for teachers of exceptional children.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS ~~[161.020]~~ 161.028, 161.030

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

Section 1. Definition. ~~[For purposes of this administrative regulation]~~ "Qualified" ~~[shall]~~ means a teacher who holds the appropriate certification as a teacher of exceptional children unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. If a qualified teacher is not available for the position of teacher of exceptional children as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary certificate be issued as provided in this administrative regulation.

(1)(a) A valid classroom certificate or internship statement of eligibility for grades K-4, 1-8, or 5-8 shall be a prerequisite for a one (1) year probationary certificate for learning and behavior disorders, grades K-12; ~~[for trainable mentally handicapped, grades K-12];~~ for hearing impaired, grades K-12; and for an endorsement for teaching the visually impaired, grades 1-8. ~~[Further,]~~ The applicant shall have

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enrolled in a preparation program in the certification area for which application is being made, and shall have completed a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(b) A valid classroom teaching certificate or internship statement of eligibility for grades 7-12 or 9-12 shall be a prerequisite for a one (1) probationary year certificate for learning and behavior disorders, grades 7-12 and for an endorsement for teaching the visually impaired, grades 7-12. ~~[Further,]~~ The applicant shall have enrolled in a preparation program in the certification area for which application is being made, and shall have completed three (3) semester hours in the teaching of reading and a minimum preparation of nine (9) semester hours of credit from the special education component of the approved curriculum.

(c) A valid classroom teaching certificate or internship statement of eligibility for grades K-4, 1-8, 5-8, 7-12, or 9-12 shall be a prerequisite for a one (1) year probationary certificate for teaching the moderately and severely disabled. The applicant shall have enrolled in a preparation program for teaching the moderately and severely disabled and shall have completed nine (9) semester hours of credit from the special education component of the approved curriculum for teaching the moderately and severely disabled.

(2) The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services.

(3) The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services. Teachers employed after the fall conference shall complete these six (6) hours of training during the spring conference of the Council for Exceptional Children.

Section 3. The renewal of the one (1) year probationary certificate for teachers of exceptional children shall require completion of six (6) semester hours of additional credit from the special education component to be completed by September 1 or the year of expiration.

Section 4. Upon recommendation by the teacher education institution [three (3) years of] teaching experience performed [under a succession of one (1) year certificates] in a full-time position requiring certification for teachers of exceptional children shall be substituted for the special education portion of the student teaching requirement.

Section 5. An applicant holding a classroom teaching certificate who is recruited into a position for teachers of exceptional children under this administrative regulation shall complete the assessment requirements identified in 704 KAR 20:670 and 704 KAR 20:305 for teaching exceptional children, grades primary through twelve (12).

DANIEL GREENE, Chairman

APPROVED BY AGENCY: October 6, 1995

FILED WITH LRC: October 10, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 29, 1995, at 9 a.m. in Room 108, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 24, 1995, five days prior to 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 regulations. 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: Dr. Betty Lindsey, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort,

Kentucky 40601, (502) 564-4606.

REGULATORY IMPACT ANALYSIS

Contact Person: Betty Lindsey

(1) Type and number of entities affected: 176 school districts and approximately 350 individuals annually who receive certification as teachers of exceptional children under this regulation.

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

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

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

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

1. First year following implementation: No additional costs over current expenditures.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs associated with processing applications and issuing certificates and related recordkeeping.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Division of Certification must maintain records and issued certificates.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None. No comments received.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the education and welfare of public school children.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No direct impact on public health and environment.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amendment)

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040, 278.160, 278.180, 278.185, 278.190, 278.310

NECESSITY AND FUNCTION: This administrative regulation provides a simplified and less expensive procedure by which ~~for~~ small utilities may apply ~~in applying~~ to the commission for rate increases. A small utility may apply ~~with 400 or fewer customer billings or \$200,000 or less of gross annual revenues has the option of applying~~ for rate adjustments using ~~by means of~~ the formal procedure outlined in the preceding administrative regulations or by using ~~following~~ the procedure prescribed below, which is intended to minimize the need ~~necessity~~ for formal hearings ~~in most cases~~, to reduce filing requirements, and in many cases to shorten the time period between application and commission order.

Section 1. Utilities Permitted to File Application. Any utility with 500 or fewer customers or \$300,000 or less gross annual revenue may apply for an adjustment of rates using the procedure described below. ~~This procedure assumes that~~ The applicant shall have ~~has~~ maintained adequate financial records fully separated from any commonly-owned enterprise and shall have ~~requires that the applicant has~~ on file with the commission fully completed annual reports for the immediate past year and for ~~at least~~ the two (2) prior years ~~if when~~ the applicant has been in existence that long.

Section 2. [4-] The Record upon which Decision will be Made. Unless a ~~motion for a~~ hearing is held ~~granted by the commission, as hereinafter explained,~~ the commission will make its decision based on ~~the basis of the information contained in~~ the annual reports of the applicant for the immediate past year and ~~annual reports~~ for the two (2) prior years, ~~if when~~ the applicant has been in existence that long; ~~on information submitted in~~ the application ~~form~~; ~~and upon~~ information supplied by the applicant in response to ~~informational~~ requests submitted by the intervenors and the commission; and written reports submitted by commission staff subsequent to field review, if one (1) is conducted.

Section 3. [2-Filing] Application. The applicant shall obtain from the Executive Director ~~Secretary~~ of the Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601, the alternative rate adjustment ~~appropriate~~ application form. The applicant shall complete the ~~information called for by the~~ form, ~~shall~~ attach any documents requested ~~by the form~~, and ~~shall~~ submit one (1) original and ten (10) copies to the executive director ~~Secretary~~ of the ~~Public Service~~ commission and one (1) copy to the Public Service Litigation Branch, ~~Division of Consumer Protection,~~ Office of the Attorney General, P.O. Box 2000, ~~209 St. Clair Street,~~ Frankfort, Kentucky 40602-2000 ~~40601~~, together with one (1) copy of each of the three (3) annual reports. An applicant may, in writing, request commission assistance in preparing the application. ~~Assistance in the preparation of the application form and any supporting documents may be obtained by telephoning the commission, (502) 564-3940, or by arranging through its secretary (same telephone number) an informal conference with an appropriate member of the commission staff.~~

Section 4. [3-] Notice to Customers of Proposed Rate Changes. (1) If the applicant has twenty (20) or fewer customers, it shall mail written notice of the proposed rate changes and the estimated amount of increase per customer class ~~shall be placed in the mail~~ to each customer no later than the date on which the application is filed with

the commission. ~~and,~~ In addition, the applicant ~~a sheet~~ shall ~~be~~ post~~ed~~ at its place of business a sheet containing the ~~such~~ information provided in the written notice to its customers.

(2) Except for sewer utilities, which must give notice ~~by mail to all of its customers~~ pursuant to KRS 278.185, ~~an~~ ~~and which need not give any additional notice, all~~ applicant~~s~~ with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at its place of business; ~~and, in addition, notice thereof.~~

(4-) (a) Shall ~~be~~ include~~d~~ notice with customer bills mailed by the date ~~billings made on or before~~ the application is filed ~~with the commission~~; or

(b) ~~[(2)]~~ Shall ~~be~~ publish~~ed~~ notice ~~by such date~~ in a trade publication or newsletter that will be received by ~~going to~~ all customers by the date the application is filed; or

(c) ~~[(3)]~~ Shall ~~be~~ publish~~ed~~ notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication to be made by the date ~~prior to the filing of~~ the application is filed ~~with the commission~~.

(3) Each ~~such~~ notice shall contain the following language: The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that are higher or lower ~~differs from these proposed rates. Such action may result in rates for consumers other~~ than the rates proposed ~~included~~ in this notice.

~~[Section 4. Notice as to Intervention. The notice made in compliance with Section 3 of this administrative regulation shall also include a statement to the effect:~~

~~(1) That~~ Any corporation, association, body politic or person may request leave to intervene by motion within thirty (30) days after notice of the proposed rate changes is given. ~~A [4-]~~

~~(2) That the~~ motion to intervene shall be in writing, shall be submitted to the Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602, and shall set forth the grounds for the ~~motion, request~~ including the status and interest of the party ~~movant~~. ~~[4- and~~

~~(3) That~~ Copies of the application may be obtained at no charge from ~~by contacting~~ (the applicant) at ~~the applicant's address~~ ~~a name and address to be stated in the notice~~. Upon request from an intervenor ~~whose request for intervention has been granted~~, the applicant shall furnish to the intervenor ~~such applicant~~ a copy of the application and ~~with~~ supporting documents. ~~and a copy of each of the three (3) annual reports.~~

~~Section 5. [Intervention by Attorney General. Without making application therefor the Attorney General's Division of Consumer Protection will be deemed to be an intervening party in each case.~~

~~Section 6. Requests to Applicant for Additional Information. Any intervening party or the commission shall submit requests for additional information to the applicant within forty (40) days after the application was received by the commission. Applicant shall respond to the request within twenty one (21) days after receipt of the request.~~

Section 7.] Motion for Formal Hearing. Within ninety (90) days after ~~receipt by the commission of~~ the application has been filed, any party may file a written request ~~a motion~~ for a formal hearing, setting forth grounds therefor. ~~may be made to the commission by an intervenor.~~

Section 6. Notice of Hearing. If ~~the motion is granted, or if~~ the commission ~~see~~ orders ~~without motion, the matter will proceed as~~ a ~~formal~~ hearing, ~~After~~ the applicant ~~is advised of the date and place of hearing, it~~ shall give ~~such~~ notice as ~~is~~ required by KRS 424.300. ~~with any~~ Newspaper notice shall be ~~being~~ published once

in a newspaper of general circulation in the applicant's [ite] service area no fewer [one (1) time not less] than seven (7) and no [not] more than twenty-one (21) days prior to the hearing. The notice shall state [giving] the purpose, time, place, and date of the hearing.

Section 7. Upon a showing of good cause, the commission may permit deviations from this administrative regulation.

~~[Section 8. Decision by Commission. If a motion for a formal hearing has not been made or, if made, has been denied, the commission will decide the issues on the basis of the written submission. If the commission has not issued its order within five (5) months from the date the application was received by it, the applicant may place the proposed rates in effect subject to refund upon giving notice in writing to the commission of its intention to do so at least twenty (20) days before doing so. If the commission does not issue its order within such time periods, the commission shall make a decision no later than ten (10) months after the application was received by the commission. If it fails to do so, the rates placed in effect by the applicant shall continue in effect until changed by a new application to, or proceeding before, the commission.]~~

~~Section 9. Extensions of Time. Upon a showing of compelling need in a written application therefor, the secretary of the commission may grant an extension of time to the applicant or any intervenor.]~~

GEORGE EDWARD OVERBEY, JR., Chairman

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1995, at 10 a.m. in Hearing Room 1 of the Commission's Offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Don Mills, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, (502) 564-3940.

REGULATORY IMPACT ANALYSIS

Contact person: Don Mills, Executive Director

(1) Type and number of entities affected: Based on current Public Service Commission figures, the proposed amendments to this regulation affect 39 utilities which currently must file for rate adjustments pursuant to 807 KAR 5:001 and which would, pursuant to the proposed amendments, be eligible to file for rate adjustments pursuant to the simplified procedure provided in this regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

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

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

competition) for the:

1. First year following implementation: No additional costs will be incurred in the first year following the proposed amendments. The amendments would result in significant direct savings for the utilities affected in that the paperwork associated with filing for rate adjustments will be reduced. In addition, the proposed deletion of the requirement that the Attorney General automatically be party to each alternative rate adjustment case would reduce unnecessary postage and copying costs in those cases in which the Attorney General has not indicated a desire to intervene.

2. Second and subsequent years: There will be no increased costs in the second and subsequent years following implementation. However, the costs of filing for rate adjustments will be decreased for affected utilities as noted above.

(3) Effects on the promulgating administrative body: Since the filings made under this amended regulation will be processed within the normal business activities of the Public Service Commission, there are no expected significant direct or indirect costs or savings. However, to the extent that the volume of material to be processed pursuant to this regulation is less than that processed pursuant to 807 KAR 5:001, the proposed amendment should result in a slightly reduced workload for Public Service Commission staff.

(a) Direct and indirect costs or savings:

1. First year: None are anticipated. See response to (3) above.

2. Continuing costs or savings: None are anticipated. See response to (3) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: As a result of the lessened volume of material to be processed pursuant to the alternative rate filing procedure, the proposed amendments should result in slightly reduced workload for Public Service Commission staff.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated fiscal impact on state and local revenue as a result of these amendments.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be necessary for implementation and enforcement of these amendments.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. However, no economic impact on the geographical areas of utilities which will be able to use the alternative rate filing procedure is expected.

(b) Kentucky: No public comments have been received. However, no economic impact on Kentucky is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods of decreasing paperwork requirements for additional small utilities have been proffered by any member of the public. The Public Service Commission believes increasing the number of utilities who may file for rate adjustments pursuant to 807 KAR 5:076 is the best method of simplifying the rate adjustment process for utilities whose size indicates their operations are not sufficiently complex to mandate their filing all the information required by 807 KAR 5:001.

(8) Assessment of expected benefits: Pursuant to the proposed amendments, additional small utilities would be permitted to use the alternative rate adjustment procedure, thereby decreasing the expense and paperwork associated with filing for rate adjustments pursuant to 807 KAR 5:001. In addition, adding the staff report prepared subsequent to field review to the record on which the commission bases its decision would render more complete the record upon which decision is made. Deleting the requirement that the Attorney General will automatically be party would reduce paperwork and expense in those cases wherein the Attorney General

does not express an interest in participation after receipt of the initial application pursuant to Section 3. The proposed amendment requiring requests for hearing to be in writing would clarify the record in each case. The proposed deletion of Section 6 would remove time limitations which, in some cases may be unrealistic. The proposed addition of the new Section 7 would allow the commission to be flexible in situations wherein a party has good cause for requesting deviation from regulatory procedure. The proposed deletion of Sections 8 and 9 would simplify the regulation and avoid unnecessary repetition of requirements prescribed by statute. The proposed changes in the regulatory language would clarify and simplify the regulation and bring it into conformity with drafting rules prescribed in KRS 13A.222.

(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: The proposed amendments would have no impact on environment and public health.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The proposed amendments do not conflict with, overlap, or duplicate any current statute, administrative regulation, or government policy.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(10) Any additional information or comments: No additional comments.

(11) TIERING: Is tiering applied? Yes. The proposed amendments provide that only 39 additional utilities under the jurisdiction of the Public Service Commission will be eligible to file pursuant to the alternative rate adjustment procedure. The very purpose of the proposed amended regulation is to give regulatory effect to the reality that the financial operations of smaller utilities are less complex than those of larger ones, and to decrease the complexity of small utilities' filing requirements for rate adjustments accordingly.

**CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(Amendment)**

908 KAR 2:060. Mental health and mental retardation manuals for funding instructions, program policies and standards, [billing instructions, reporting requirements,] and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460

STATUTORY AUTHORITY: KRS 210.440 to 210.450

NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 210.370 to 210.460 to allocate available funds to mental health/mental retardation boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and administrative regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Request for Funding Instructions Manual. The Cabinet for Human Resources incorporates the Request for Funding Instructions Manual, September 1, 1995 [~~November 1, 1993~~], by reference. community mental health and mental retardation boards shall follow these instructions when preparing and submitting the annual plan and

budgets to the cabinet. The manual includes the following: rate and allocation schedules, program plan, fiscal plan, waiver request, [~~letter of assurance,~~] and addenda. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fair Oaks Lane, Frankfort, Kentucky 40601.

Section 2. Program Policies and Standards. Manual. The Cabinet for Human Resources incorporates the September 1, 1995 [~~November 1, 1993~~] edition of the Program Policies and Standards Manual by reference. The manual relates to general operating standards and particular service standards for services funded by the department. The standards contained shall be followed by those community mental health and mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fair Oaks Lane, Frankfort, Kentucky 40601.

Section 3. Cabinet for Human Resources Community Mental Health and Mental Retardation Reimbursement Manual, September 1, 1995 [~~June 1, 1994~~]. The Cabinet for Human Resources incorporates this manual by reference. This manual relates to the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those community mental health and mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fair Oaks Lane, Frankfort, Kentucky 40601.

~~[Section 4. Billing Instructions Manual. The Cabinet for Human Resources incorporates the Billing Instructions Manual, November 1, 1993, by reference. This manual relates to procedures for submission of payment requests to the department for defined services and special projects. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth Floor, Leestown Square, Fair Oaks Lane, Frankfort, Kentucky 40601.]~~

~~Section 5. Reporting Manual. The Cabinet for Human Resources incorporates the Reporting Manual, November 1, 1993, by reference. This manual relates to reporting requirements on clients, services, and outcomes. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth Floor, Leestown Square, Fair Oaks Lane, Frankfort, Kentucky 40601.]~~

ELIZABETH REHM WACHTEL, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: October 4, 1995

FILED WITH LRC: October 13, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for Tuesday, November 21, 1995, at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by Thursday, November 16, 1995, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Elizabeth Rehm Wachtel, Ph.D., Commissioner
(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the

department to provide mental health, mental retardation, and substance abuse services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the Notice of Intent being published, and no written comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Minimal

(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: 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 federal funds.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published, and no written comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published, and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state and federal law.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or 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? Tiering was not applied since the application of policy is required to be applied in a like manner for all individuals.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, OCTOBER 13, 1995

GENERAL GOVERNMENT CABINET
Kentucky Board of Registration for
Professional Geologists
(New Administrative Regulation)

201 KAR 31:050. Renewals.

RELATES TO: KRS 322A.060

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.060

NECESSITY AND FUNCTION: KRS Chapter 322A provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. Persons registered as a professional geologist shall annually, before October 1, pay to the board a renewal fee as set forth in 201 KAR 31:010, Section 3(1) for the renewal of the registration. Registrations not renewed before October 1 of each year shall expire as set forth in KRS 322A.060(1).

Section 2. A ninety (90) day grace period shall be allowed beginning October 1, during which time individuals may continue to practice and may renew their registration upon payment of the late renewal fee as set forth in 201 KAR 31:010, Section 3(2).

Section 3. Registrations not renewed before December 29, shall be suspended based on the failure of the individual to renew in a timely manner as set forth in KRS 322A.060(2). Upon suspension, the registrant shall no longer be eligible to practice geology in the Commonwealth and shall be sent notice at the last known address available to the board of suspension, and to cease and desist practice.

Section 4. After the ninety (90) day grace period and before the end of two (2) years, individuals with a suspended registration, due to failure to renew, may have their registration reinstated upon:

- (1) Payment of the reinstatement fee as set forth by 201 KAR 31:010, Section 3(3);
- (2) Completion of the renewal form; and
- (3) Documentation of employment from the time of suspension until the present.

JOHN C. PHILLEY, Ph.D., Board Chairman

APPROVED BY AGENCY: October 13, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1995, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of

Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: All registered geologists will be required to pay a renewal fee of \$25 per year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Costs are minimal.

(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: Costs are minimal.

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

1. First year following implementation: Renewal form must be completed.

2. Second and subsequent years: Renewal form must be completed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Renewals will generate around \$50,000 per year for operating expenses.

2. Continuing costs or savings: Renewals will generate around \$50,000 per year for operating expenses.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Over 2,000 renewals will be processed.

(4) Assessment of anticipated effect on state and local revenues: Renewals will generate around \$50,000 per year for operating expenses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing funds will be used to pay for renewal process.

(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: Economic impact will be minimal.

(b) Kentucky: Economic impact will be minimal.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only funding which the board receives.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This regulation sets out the renewal process for those persons holding registration as a professional geologists.

(11) TIERING: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

ADMINISTRATIVE REGISTER - 999

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (New Administrative Regulation)

201 KAR 33:010. Fees.

RELATES TO: KRS 310.041(5), 310.050

STATUTORY AUTHORITY: KRS 310.041(1), (5)

NECESSITY AND FUNCTION: This administrative regulation is necessitated by KRS 310.041(5) and 310.050 and sets forth in detail all fees charged by the board.

Section 1. Application Fee. The following fees are non-refundable and shall be paid in connection with applications for licensure as a dietitian and certification as a nutritionist:

(1) The application fee for licensure as a dietitian shall be fifty (50) dollars.

(2) The application fee for certification as a nutritionist shall be fifty (50) dollars.

Section 2. Renewal Fees and Penalties. The following fees shall be paid in connection with licensure and certification renewals and late renewal penalties:

(1) The annual renewal fee for licensure or certification shall be fifty (50) dollars for each credential;

(2) The late renewal fee for late renewal during the sixty (60) day grace period shall be twenty-five (25) dollars for each credential; and

(3) The reinstatement fee for licensure or certification renewal after the end of the sixty (60) day grace period shall be fifty (50) dollars for each credential.

Section 3. Duplicate Registration Fees. The fee for a duplicate license or certificate shall be ten (10) dollars.

CAROLE WILSON, R.D., L.D., Board Chairman

APPROVED BY AGENCY: October 10, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: Those persons seeking to be licensed as a dietitian or certified as a nutritionist.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: None

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

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

1. First year following implementation: This administrative regulation will create minimal reporting requirements for those individuals seeking to be licensed as a dietitian or certified as a nutritionist.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All applications for licensure as a dietitian or certification as a nutritionist will be reviewed by the board.

(4) Assessment of anticipated effect on state and local revenues: Funds will be generated to provide for expenditures by the board.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees paid by the applicants.

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

(a) Geographical area in which administrative regulation will be implemented: Commonwealth of Kentucky.

(b) Kentucky: Entire state.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 310 requires the board to set fees.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Only those individuals with the proper education will be able to hold themselves out to the public as a licensed dietitian or certified nutritionist.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Individuals without the proper education would hold themselves out to the public as a licensed dietitian or certified nutritionist.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations, or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified candidates.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (New Administrative Regulation)

201 KAR 33:020. Renewals.

RELATES TO: KRS 310.050

STATUTORY AUTHORITY: KRS 310.041, 310.050

NECESSITY AND FUNCTION: KRS 310.050 provides that the board shall promulgate administrative regulations establishing

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procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. Regular Renewal. (1) Persons licensed as a dietitian or certified as a nutritionist shall annually, before November 1, pay to the board a renewal fee as set forth in 201 KAR 33:010 for the renewal of the license or certificate.

(2) Licenses or certificates not renewed before November 1 of each year shall expire.

(3) Persons requesting renewal of their licensure or certification shall comply with the continuing education requirements of KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 2. Late Renewal and the Grace Period. (1) A sixty (60) day grace period shall be allowed beginning November 1, during which time individuals may renew their license or certificate upon payment of the renewal fee plus the late renewal fee as set forth in 201 KAR 33:010.

(2) The person holding the license or certificate may continue to practice during the sixty (60) day grace period.

(3) Persons requesting renewal of their certification during the sixty (60) day grace period shall comply with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 3. Automatic Revocation. (1) Licenses or certificates not renewed before December 31, shall be automatically revoked as specified by KRS 310.050.

(2) Upon revocation, the licensee shall no longer be eligible to practice in the Commonwealth and shall be sent notice at the last known address available to the board that their credential has been revoked and that they shall cease and desist practice.

Section 4. Licensure and Certification Reinstatement. After the sixty (60) day grace period, an individual with a license or certificate which has been automatically revoked due to failure to renew, may have their license or certificate reinstated upon:

(1) Payment of the renewal fee plus a reinstatement fee as set forth by 201 KAR 33:010; and

(2) Documentation that they have successfully complied with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

CAROLE WILSON, R.D., L.D., Board Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: David Nicholas

(1) Type and number of entities affected: Those persons licensed as a dietitian or certified as a nutritionist.

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

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

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

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

1. First year following implementation: This administrative regulation will create minimal reporting requirements for those individuals licensed as a dietitian or certified as a nutritionist.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All applications for renewal of licensure as a dietitian or certification as a nutritionist will be processed by the board.

(4) Assessment of anticipated effect on state and local revenues. Funds will be generated to provide for expenditures by the board.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Fees paid by the applicants.

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

(a) Geographical area in which administrative regulation will be implemented. Commonwealth of Kentucky.

(b) Kentucky. Entire state.

(7) Assessment of alternative methods; reasons why alternative methods were rejected. KRS 310.050 provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of licenses. This sets forth the procedures to be followed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Only those individuals with the proper education will be able to hold themselves out to the public as a licensed dietitian or certified nutritionist.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Yes

(c) If detrimental effect would result, explain detrimental effect: Individuals without the proper education would hold themselves out to the public as a licensed dietitian or certified nutritionist.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified persons.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure and Certification for
Dietitians and Nutritionists
(New Administrative Regulation)

201 KAR 33:030. Continuing education requirements for licensees and certificate holders.

RELATES TO: KRS 310.041(1), 310.050

STATUTORY AUTHORITY: KRS 310.041(1), 310.050(3)

NECESSITY AND FUNCTION: This administrative regulation is necessitated by KRS 310.050(3) and sets forth in detail the requirements for continuing education.

Section 1. (1) The annual continuing education compliance period extends from November 1 of each year to October 31 of the next year.

(a) During this period of time, fifteen (15) hours of approved continuing education shall be completed by the licensee or certificate holder in order to renew the license or certificate for the next licensure or certification period.

(b) Individuals who hold both licensure as a dietitian and certification as a nutritionist shall complete a total of fifteen (15) hours of approved continuing education in order to renew both credentials.

(2) If a new licensee or certificate holder is licensed or certified during the year, the licensee or certificate holder shall be exempt from meeting continuing education requirements for the first license or certification renewal.

(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which has prior approval by the board.

(4) No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period.

(5) It shall be the responsibility of each licensee or certificate holder to finance the costs of continuing education.

(6) For purposes of the audit set forth in subsection (8) of this section, every licensee or certificate holder shall maintain a record of all continuing education courses attended for two (2) years after the continuing education period. Appropriate documentation to be kept includes the continuing professional education annual statement furnished by the Commission on Dietetic Registration or any of the following:

(a) Certificates of attendance for the prior approved continuing education;

(b) Transcripts for academic coursework;

(c) Reprints of journal articles published; or

(d) Proof of attendance, description of activity, and professional qualifications of the presenter for out-of-state continuing education activities.

(7) Each licensee or certificate holder shall sign a statement on the renewal application form indicating compliance with the continuing education requirements. No license or certificate shall be renewed without this sworn statement.

(8) The board reserves the right to audit a licensee's or certificate holder's continuing education records each year.

(a) Licensees or certificate holders who are audited shall be chosen in a random manner or at the discretion of the board.

(b) Falsifying reports or failure to meet continuing education requirements may result in formal disciplinary action.

Section 2. Approved Continuing Education Activities. (1) Obtaining continuing education. Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which has been approved by the board. The board shall approve continuing education hours which have been approved by the Commission on Dietetic Registration of the American Dietetic Association.

(2) Criteria for appropriate subject matter. Appropriate subject matter for continuing education hours reflects the educational needs of the licensed dietitian or certified nutritionist and the nutritional health needs of the consumer. Subject matter shall be limited to offerings that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth. The following areas shall be deemed appropriate subject matter for continuing education credit if, in the judgment of the board, they are directly related to the practice of dietetics or nutrition:

(a) Sciences on which dietetic practice, dietetic education, or dietetic research is based including nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's nutritional health;

(b) Nutrition therapy related to assessment, counseling, teaching, or care of clients in any setting; or

(c) Management or quality assurance of nutritional care delivery systems.

(3) Standards for approval of continuing education, programs and activities. A continuing education activity shall be qualified for approval if the board determines that:

(a) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee or certificate holder; and

(b) It pertains to subject matters which relate integrally to the practice of dietetics or nutrition; and

(c) It is conducted by individuals who have education, training and experience in the subject matter of the program.

(4) Academic coursework. Coursework for credit shall be completed at a U.S. regionally accredited college or university.

(a) To receive continuing education credit the coursework shall be beyond entry-level dietetics.

(b) One (1) academic semester credit equals fifteen (15) continuing education hours.

(c) One (1) academic quarter credit equals ten (10) continuing education hours.

(5) Scholarly publications. Publications may be approved if they are published in a refereed professional journal. Continuing education credit hours may be reported using the following guidelines:

Senior author: first of two (2) or more authors listed.

Co-author: second of two (2) authors listed.

Contributing author: all but senior of three (3) or more authors.

Research papers:

Single author - ten (10) hours.

Senior author - eight (8) hours.

Co-author - five (5) hours.

Contributing author - three (3) hours.

Technical articles:

Single author - five (5) hours.

Senior author - four (4) hours.

Co-author - three (3) hours.

Contributing author - two (2) hours.

Information sharing articles - one (1) hour.

Abstracts:

Senior author - two (2) hours.

Co-author - one (1) hour.

(6) Poster sessions. Continuing education credit may be obtained for attending juried poster sessions at national or state professional meetings that meet the criteria for appropriate subject matter established in subsection (3) of this section. One (1) hour of continuing education credit shall be allowed for each six (6) posters reviewed not to exceed five (5) hours in a continuing education year.

(7) Continuing education hours for presenters. Presenters may receive continuing education hours subject to the following requirements:

(a) Presentations to the lay public are inappropriate;

(b) Hours shall be requested only once for the same presentation;

(c) The presenter may request twice the number of hours

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approved for the activity;

(d) Two (2) hours per topic shall be allowed for presenters of poster sessions at national or state professional meetings; and

(e) A copy of the abstract or manuscript and documentation of the peer review process shall be included in the licensee's or certificate holder's documentation list.

Section 3. Procedures for Prior Approval of Continuing Education Activities. (1) An organization or person which seeks prior approval of a course, program or other continuing education activity shall apply to the board for approval at least sixty (60) days in advance of the commencement of the activity. The application shall state the:

(a) Dates;

(b) Subjects offered;

(c) Objectives for the activity;

(d) Total hours of instruction;

(e) Names and qualifications of speakers; and

(f) Other pertinent information.

(2) The board shall approve or deny timely and complete applications before the commencement of the activity.

(3) Review of programs. The board may monitor and review any continuing education program already approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

Section 4. Subsequent Approval of Continuing Education Activities. (1) Subsequent approved activities are individual or group educational activities for which program providers or sponsors have not requested continuing education hour approval prior to the date of the activity. Activities which have received prior approval may not be submitted on a subsequent approval basis.

(2) The person seeking subsequent approval of continuing education activities shall submit the following information regarding the program attended:

(a) Dates;

(b) Subjects offered;

(c) Learner educational objectives for the activity and anticipated outcomes;

(d) Total hours of instruction;

(e) Names and qualifications of speakers;

(f) A timing outline, including time spent for registration, introductions, welcomes, and coffee and meal breaks;

(g) The number of continuing education hours requested; and

(h) Any other pertinent information.

(3) Requests for approval shall be submitted as follows:

(a) Normal continuing education programs shall be submitted within thirty (30) days of completion;

(b) Publications shall be submitted within six (6) months of the date of publication; and

(c) Academic coursework shall be submitted within one (1) year of the course completion date.

(4) Activities which have not received prior approval may be submitted by individuals on a subsequent approval basis with rationale demonstrating continuing education value.

Section 5. Appeals Procedure. Individual licensees or certificate holders may appeal decisions regarding continuing education by filing a written appeal. Appeals shall be sent to the board within thirty (30) calendar days after notification of denial and shall be considered by the board at its next scheduled meeting.

Section 6. Waiver of Continuing Education. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A written request for waiver or extension of time shall be

submitted by the person holding licensure or certification and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure or certification shall reapply.

CAROLE WILSON, R.D., L.D., Board Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: David Nicholas

(1) Type and number of entities affected: Those persons licensed as a dietitian or certified as a nutritionist.

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

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

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

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

1. First year following implementation: This administrative regulation will create minimal reporting requirements for those individuals licensed as a dietitian or certified as a nutritionist.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All applications for renewal of licensure as a dietitian or certification as a nutritionist will be reviewed by the board and must contain documentation of the required number of hours of continuing education.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Fees paid by the applicants.

(6) To the extent available from the public comments received,

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the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. Commonwealth of Kentucky.

(b) Kentucky. Entire state.

(7) Assessment of alternative methods; reasons why alternative methods were rejected. KRS Chapter 310 requires persons credentialed by the board to obtain continuing education as a condition of renewal.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Those individuals licensed as a dietitian or certified as a nutritionist will be required to keep their knowledge of the profession current.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Yes

(c) If detrimental effect would result, explain detrimental effect: Individuals without the proper education would hold themselves out to the public as a licensed dietitian or certified nutritionist.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified candidates.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (New Administrative Regulation)

201 KAR 33:040. Compensation of board members.

RELATES TO: KRS 310.020(5)

STATUTORY AUTHORITY: KRS 310.020(5), 310.041(1)

NECESSITY AND FUNCTION: KRS 310.020(5) requires the board to set the compensation for board members by administrative regulation. This administrative regulation sets the compensation of board members.

Section 1. Eligible members of the board shall receive compensation in the amount of \$100 per day for each day of actual board service and travel expenses to the extent authorized by 200 KAR Chapter 2.

CAROLE WILSON, R.D., L.D., Board Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995, at 1 p.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, Telephone number (502) 564-3296.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: David Nicholas

(1) Type and number of entities affected: None

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Per diem and travel costs will be paid from board funds.

2. Continuing costs or savings: Per diem and travel costs will be paid from board funds.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All board members receiving per diem compensation and travel will be required to file travel vouchers.

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

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

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

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

(b) Kentucky. None

(7) Assessment of alternative methods; reasons why alternative methods were rejected. KRS Chapter 310 requires the board to set compensation by 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: Extremely modest compensation will be provided to board members.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Yes

(c) If detrimental effect would result, explain detrimental effect: Individuals without the proper education would hold themselves out to the public as a licensed dietitian or certified nutritionist.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified persons.

ADMINISTRATIVE REGISTER - 1004

DEPARTMENT OF STATE POLICE (New Administrative Regulation)

502 KAR 45:145. Merit Pay Program.

RELATES TO: KRS 16.040, 16.050, 16.080

STATUTORY AUTHORITY: KRS 16.050, 16.080

NECESSITY AND FUNCTION: KRS 16.050 sets forth the compensation provisions for officers of the Department of State Police. KRS 16.040 and 16.080 vests in the commissioner the authority to adopt administrative regulations relating to the compensation of officers. This administrative regulation establishes the procedure to be used to provide a merit pay program for officers of the Department of State Police.

Section 1. The Commissioner of the Department of State Police may utilize up to fifty (50) percent of funds saved through a combination of high performance levels and staff reduction to grant merit pay awards to officers. Merit pay awards shall be contingent upon the availability of surplus funds within the commissioner's budget and shall be within the sole discretion of the commissioner. A merit pay award shall equal two (2) percent of the officer's pay and shall be paid in a lump sum.

Section 2. The officer meets the standards of the Merit Pay Program adopted by the commissioner to include:

- (1) Attainment of physical fitness standards.
- (2) No more than one (1) assessable SP accident during the twelve (12) month period.
- (3) No disciplinary action resulting in an official written reprimand, reduction in pay or grade, or involuntary suspension from duty with or without pay.
- (4) No more than forty (40) sick hours taken during the twelve (12) month period, excluding absences due to duty related injuries.
- (5) An officer must receive an overall average rating of "above standard" (ninety (90) percent or more) on the officer inspection reports completed during each twelve (12) month evaluation period.

Section 3. An officer shall be eligible for only one (1) merit pay award in a twelve (12) month period.

Section 4. In order to grant a merit pay award, the commissioner shall submit the personnel action form and written justification.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

REGULATORY IMPACT ANALYSIS

Contact Person: Jean Ann Gabbard

(1) Type and number of entities affected: All sworn officers of 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) for the: No significant compliance, reporting or reporting changes are anticipated.

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant savings or costs anticipated.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

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

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact is 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: No public health or environmental impact seen.

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

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

(9) Identify any statute, administrative regulation or 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: None

(10) Any additional information or comments: This amendment is designed to permit appointing authorities greater flexibility in regarding employees for performance and to enable them to be more competitive in recruiting and retaining highly qualified employees.

(11) TIERING: Is tiering applied? No. This administrative regulation applies only to sworn officers of the Department of State Police.

ADMINISTRATIVE REGISTER - 1005

DEPARTMENT OF STATE POLICE (New Administrative Regulation)

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

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040

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.

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.

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 1995 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 22, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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.

EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education
Office of District Support Services
(New Administrative Regulation)

702 KAR 3:246. School council allocation formula: KETS district administrative system chart of accounts.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: KRS 160.345(8) mandates that

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the Kentucky Board of Education adopt a formula by administrative regulation which guides the way in which school district funds shall be allocated to each school council. This administrative regulation is designed for use by local school districts utilizing the Kentucky Education Technology System (KETS) District Administrative System Chart of Accounts per 702 KAR 3:120.

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority.

(2) "Instructional supplies and materials" means items that are consumed or worn out in the instructional process to include:

- (a) Library books;
- (b) Periodicals and newspapers;
- (c) Library supplies;
- (d) Audio visual material and equipment;
- (e) Supplementary books;
- (f) Reference materials;
- (g) Instructional software; and
- (h) Teaching supplies to include paper products.

(3) "Instructional equipment" means initial or additional furniture, fixtures, and equipment for instruction which may be purchased, leased, or rented. "Instructional equipment" shall not mean computer laboratories, or the initial inventory of a new school plant.

(4) "Instructional travel" means travel for all personnel and their assistants, including travel in connection with everyday instructional activities and travel to conventions, meetings and workshops.

(5) "District average teacher's salary" means the total of all teacher salaries for 185 days in noncategorical programs in the district divided by the number of teachers in the noncategorical programs in the district.

Section 2. The local school district shall provide to school councils established by January 30 an allocation for the next budget year by March 1 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils using only the general fund and by excluding the following proposed districtwide expenditures from the general fund in the district draft budget:

- (1) Function 1200, Home and hospital.
- (2) Function 1900, Other instructional programs.
- (3) Function 2100, Student support services, except for school-based employees and specified supplies.
- (4) Function 2210, Instructional staff support services, improvement of instruction, central office staff and supplies only.
- (5) Function 2300, District administration support services.
- (6) Function 2500, Business support services.
- (7) Function 2600, Plant operation and maintenance, except for school-based employees and specified supplies.
- (8) Function 2700, Student transportation.
- (9) Function 2800, Central Office support services.
- (10) Function 3000, Noninstructional services.
- (11) Function 4000, Facilities acquisition and construction services.
- (12) Function 5000, Other.
- (13) All expenditures for extra duty and extended employment, exceptional children services, and itinerant teachers in all codes.

Section 4. Allocation for Certified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming

school year; and

(b) To meet other classroom teaching and certified staff positions not included in paragraph (a) of this subsection that are generated by the local board certified staffing policy.

(2) Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1. Any revisions shall be submitted within thirty (30) days of action.

(3) Funds for positions allocated in subsection (1) of this section shall be based on the previous year's actual 185 day salary and associated fringe benefits except sick, personal, or emergency leave adjusted by changes in rank, additional year of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary and associated fringe benefits except sick, personal, or emergency leave adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the certified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 5. Allocation for Classified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action.

(2) Funds shall be provided for all school-based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any districtwide increase.

(3) Funds shall be allocated for fringe benefit amounts except for sick, personal, or emergency leave for each classified staff member.

(4) Funds for new or vacant positions shall be based on ninety-five (95) percent of the district's average classified salary for that personnel job class and associated fringe benefits except for sick, personal, or emergency leave for noncategorical staff adjusted for any districtwide increase.

(5) If the actual salary of new classified personnel is less than ninety-five (95) percent of the classified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 6. Instructional Supplies, Materials, Travel, and Equipment. (1) For instructional supplies, materials, travel, and equipment school councils shall receive a minimum allocation of three and one-half (3 1/2) percent of the statewide guaranteed base funding level for Support Education Excellence in Kentucky (SEEK) based on prior year final average daily attendance.

(2) The amount generated in subsection (1) of this section shall be adjusted at the end of the second school month for changes in average daily attendance and projected funding for SEEK. Adjustments prior to the end of the second school month for the 1995-96 school year shall use enrollment data and apply to the original

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allocations made by March 1, 1995. Subsection (1) of this section shall not apply for the 1995-96 school year.

(3) Allocations under subsections (1) and (2) of this section shall not include funds for operating expenses, including utilities, or for health and safety requirements of schools.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed in one (1) of the following manners:

(a) An amount per prior year final average daily attendance;

(b) Based on pupil needs identified by school councils and designated by the local school board. Money provided under this subsection shall be used only for the needs identified by the council and designated by the board;

(c) A combination of subsections (a) and (b) of this section.

(2) An adjustment may be made to allocations under subsection (1) of this section at the end of the second school month for changes in average daily attendance and projected funding for SEEK.

(3) If Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. Nothing in this administrative regulation shall prohibit the district from providing funds to school councils in excess of the allocation amounts generated by Sections 4, 5, and 6 of this administrative regulation or other operational and capital outlay items.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budgets. The district board of education shall develop allocation procedures for professional development funds pursuant to KRS 160.345(8).

Section 10. No school council allocation by the district shall result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

Section 11. Nothing in this administrative regulation shall prohibit districts from passing on to school councils any reduction in state and local revenues.

Section 12. The Kentucky Board of Education may approve requests from local school districts annually to use an alternative formula to allocate funds to schools. Local school districts requesting approval to use an alternative process shall submit written documentation that the formula would generate funding equal to or greater than the amount provided to school councils under Section 3 of the administrative regulation. All requests shall be received by the Division of Finance by October 1 preceding the allocation year. Any alternative process approved by the Kentucky Board of Education shall be subject to subsequent review.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Wilmer S. Cody
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 6, 1995

FILED WITH LRC: October 9, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1995, at 10 a.m. in the

State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 districts.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

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

RELATES TO: KRS 243.030(7), (16)

STATUTORY AUTHORITY: KRS 241.060, 243.030(28)

NECESSITY AND FUNCTION: KRS 243.030 lists the specific kinds of licenses relating to distilled spirits and wine and authorizes such other special licenses as the board may find necessary. This administrative regulation provides for the issuance of a special temporary "distilled spirits and wine auction license" to charitable, nonprofit corporations. There presently is no license under which a charitable auction can be held.

Section 1. A special temporary distilled spirits and wine auction license may be issued to a charitable organization or nonprofit organization.

Section 2. A special temporary distilled spirits and wine auction license shall authorize the charitable organization or nonprofit organization to:

(1) Purchase, transport, receive, possess, store, and sell distilled spirits and wine to be sold at auction; and

(2) Purchase distilled spirits and wine from distillers, vintners, wholesalers, retailers, or accept by gift or donation from individuals.

Section 3. Each wine auction conducted by a charitable organization or nonprofit organization shall be conducted only on the days and only during the hours that the sale of alcoholic beverages is otherwise authorized in the location where the auction is held.

Section 4. No special temporary distilled spirits and wine auction license shall be issued for any period longer than thirty (30) days. During this period, only one (1) auction shall be held.

Section 5. The charitable organization or nonprofit organization possessing a special temporary distilled spirits and wine auction license shall post a copy of the license at the location of the wine auction.

Section 6. All restrictions and prohibitions applying to a distilled spirits and wine retail package license, not inconsistent with this section, shall apply to a special temporary distilled spirits and wine auction license.

Section 7. The fee for this license shall be set as provided in KRS 243.030(7) and (16).

Section 8. (1) ABC-754, an "Application for Special Temporary Distilled Spirits and Wine Auction License" (8/11/95 edition), Department of Alcoholic Beverage Control, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

D. B. GRUGIN, Commissioner

EDWARD HOLMES, Secretary

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 12, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 21, 1995 at 1 p.m. in the Hearing Room of the Kentucky Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by

Thursday, November 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend 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 regulations. 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 regulations. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Ms. Cynthia Newton, Secretary to the Board, Department of Alcoholic Beverage Control, 123 Walnut, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Gordon Goad

(1) Type and number of entities affected: All distillers, vintners, wholesalers, and retailers licensed to sell distilled spirits and wine 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 have been received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been 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: Minimal paperwork. Anticipate 10 to 15 applications.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: No new employees anticipated.

(a) Direct and indirect costs or savings:

1. First year: Minimal costs for purchase of application forms.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: 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: Fees paid for by applicants.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No existing regulation under which a charitable auction can be held.

(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 enforcement and public health would result if not implemented: None

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

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because

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this regulation will be applied equally to all entities statewide.

KENTUCKY HEALTH POLICY BOARD (New Administrative Regulation)

909 KAR 1:100 Provider network certification.

RELATES TO: KRS 304.17A

STATUTORY AUTHORITY: KRS 216.2905(a), (b), 304.17A-010(12), 304.17A-100(5)

NECESSITY AND FUNCTION: This administrative regulation sets out the criteria for provider networks authorized by KRS 304.17A-010(12) and 304.17A-100(5).

Section 1. Definitions. (1) "Board" means the Kentucky Health Policy Board. As defined by KRS 216.2903.

(2) "Copayment" means an amount an enrollee shall pay in order to receive a specific service which is not fully prepaid.

(3) "Deductible" means the amount an enrollee is responsible to pay out of pocket before the provider network begins to pay the costs associated with treatment.

(4) "Enrollee" means an individual who is covered by a provider network.

(5) "Evidence of coverage" means a statement of the essential features and services of the provider network coverage which is given to the enrollee by the provider network.

(6) "Insurer" has the same meaning as set out in KRS 304.17A-010(12) and 304.17A-100(5).

(7) "Net worth" means the excess of total admitted assets over total liabilities, but the liabilities shall not include fully subordinated debt.

(8) "Participating provider" means a provider as defined in subsection (10) of this section who, under a contract with the provider network has agreed to provide health care services to enrollees with an expectation of receiving payment, other than copayment or deductible, directly or indirectly from the provider network.

(9) "Provider" means any physician, hospital or other person licensed or otherwise authorized to furnish health care services and includes partnership, professional service association, trust or corporation of providers.

(10) "Provider network" means a provider sponsored integrated health delivery network which is owned, governed and managed by providers, which undertakes to provide, either directly or through contractual arrangements with other providers, the full range of health care services in compliance with this administrative regulation.

(11) "Uncovered expenditures" means the costs to the provider network for health care services that are the obligation of the provider network for health care services not provided by participating providers.

Section 2. Establishment of Provider Networks. (1) No provider network shall operate in Kentucky without a certificate of authority from the board.

(2) Each application for a certificate of authority shall be filed in duplicate on a form prescribed by the board and verified by an officer or authorized representative of the applicant, and shall set forth or be accompanied by the following:

(a) A copy of the organizational documents of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) A copy of the bylaws, rules and administrative regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant, including the manner in which the provider owners and employees of the provider network will provide services to enrollees;

(c) A list of the names, addresses, official positions and biographical information of the persons who are to be responsible for the conduct of the affairs and day-to-day operations of the applicant, including all members of the board of directors, board of trustees, executive committee or other governing board or committee and the principal officers in the case of a corporation, or the partners or members in the case of a partnership or professional service association and the names and addresses of each owner of five (5) percent or more of the provider network. The provider network shall provide for enrollee participation on the governing body;

(d) A copy of any contract form made or to be made between any class of providers and the provider network and a copy of any contract made or to be made between third party administrators, marketing consultants or persons listed in paragraph (c) of this subsection and the provider network;

(e) A copy of the form of evidence of coverage to be issued to the enrollees, which includes the provider network's plan rules and utilization review procedures;

(f) Financial statements showing the applicant's assets, liabilities and sources of financial support. Include both a copy of the applicant's most recent (regular) certified financial statement and an unaudited current financial statement;

(g) A financial feasibility plan which includes detailed enrollment projections, the methodology for determining premium rates to be charged during the first twelve (12) months of operations certified by an actuary or other qualified person, a projection of balance sheets, cash flow statements showing any capital expenditures, purchase and sale of investments and deposits with the state, and income and expense statements anticipated from the start of operations until the organization has had net income for at least one (1) year, and a statement as to the sources of working capital as well as other sources of funding;

(h) A statement or map reasonably describing the counties to be served and written assurance that health services will be provided to enrollees within thirty (30) miles of residence, unless those services are not available;

(i) A description of the internal grievance procedures to be utilized for the investigation and resolution of enrollee and provider complaints and grievances;

(j) A description of the proposed quality assurance program, including the formal organizational structure, methods for developing criteria, procedures for comprehensive evaluation of the quality of care rendered to enrollees, and processes to initiate corrective action and reevaluation when deficiencies in provider or organizational performance are identified;

(k) A description of the procedures to be implemented to meet the protection against insolvency requirements in Section 9 of this administrative regulation;

(l) A list of the names, addresses, and license numbers of all providers with which the provider network has agreements;

(m) Such other information as the board may require to make the determinations required in Section 3 of this administrative regulation.

Section 3. Issuance of Certificate of Authority. (1) The board shall within forty-five (45) days of receipt of the application issue a certificate of authority to any person filing a completed application upon receiving a fee in the amount of \$500 and upon the board being satisfied that:

(2) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy and possess good reputations;

(3) The provider network will effectively provide the full range of health care services on a prepaid basis, except for copayments and/or deductibles; and

(4) The provider network is in compliance with these administrative regulations.

Section 4. Fidelity Bond. A provider network shall maintain in

force a fidelity bond or fidelity insurance in an amount not less than \$250,000 on employees and officers, directors and partners who receive, collect, disburse or invest funds of the provider network.

Section 5. Quality Assurance Program. The provider network shall establish procedures to assure that the health care services provided to enrollees shall be rendered under reasonable standards of quality of care consistent with prevailing professionally recognized standards of medical practice. Such procedures shall include mechanisms to assure availability, accessibility and continuity of care.

Section 6. Grievance Procedures. Every provider network shall establish and maintain a grievance procedure which has been approved by the board, to provide procedures for the effective resolution of grievances initiated by enrollees and providers.

Section 7. Annual Report. (1) Every provider network shall annually, on or before the first of March, file a report verified by at least two (2) principal officers, with the board covering the preceding calendar year. Such report shall include:

- (a) An audited financial statement;
 - (b) A list of providers who have executed contracts with the provider network, including those who are owners or who are employed by the provider network;
 - (c) A description and supporting documentation of any change in governance or operation of the provider network; and
 - (d) A summary of all grievances, including final dispositions.
- (2) The board may require such additional reports as are deemed necessary and appropriate to enable the board to carry out its duties under this administrative regulation.

Section 8. Investments. Funds of a provider network shall be invested only in accordance with KRS Chapter 304, Subtitle 7.

Section 9. Protection Against Insolvency. (1) Net worth requirements.

(a) Before issuing any certificate of authority, the board shall require that the provider network have an initial net worth of \$1,500,000 and shall thereafter maintain the minimum net worth required under paragraph (b) of this subsection.

(b) Every provider network shall maintain a minimum net worth equal to the greater of:

- 1. \$1,000,000; or
- 2. Two (2) percent of annual premium revenues as reported on the most recent annual financial statement filed with the board on the first \$150,000,000 of premiums and one (1) percent of annual premiums on the premiums in excess of \$150,000,000; or
- 3. An amount equal to the sum of three (3) months uncovered health care expenditures as reported on the most recent financial statement filed with the Kentucky Health Policy Board; or
- 4. An amount equal to the sum of eight (8) percent of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four (4) percent of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the board.

(c) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the board. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated.

1. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.

2. Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the board, shall not be considered a liability and shall be recorded as equity.

(2) Deposit requirements.

(a) Unless otherwise provided below, each provider network shall deposit with the board or, at the discretion of the board, with any

organization or trustee acceptable to the board through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to it which at all times shall have a value of not less than \$300,000.

(b) The deposit shall be an admitted asset of the provider network in the determination of net worth.

(c) All income from deposits shall be an asset of the provider network. A provider network that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the board before being deposited or substituted.

(d) The deposit shall be used to protect the interests of the provider network's enrollees and to assure continuation of health care services to enrollees of a provider network which is in rehabilitation or conservation. The board may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the provider network is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of KRS Chapter 304, Subtitle 33.

(3) Liabilities. Every provider network shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the provider network is or may be liable, and to provide for the expense of adjustment or settlement of such claims.

(4) Hold harmless.

(a) Every contract between a provider network and a participating provider of health care services shall be in writing and shall set forth that in the event the provider network fails to pay for health care services as set forth in the contract, the enrollee shall not be liable to the provider for any sums owed by the provider network.

(b) In the event that the participating provider contract has not been reduced to writing as required by this subsection or that the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the enrollee sums owed by the provider network.

(5) Continuation of benefits. Each provider network shall have a plan for handling insolvency which guarantees the continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits.

Section 10. Uncovered Expenditures Insolvency Deposit. If at any time uncovered expenditures exceed ten (10) percent of total health care expenditures, a provider network shall place an uncovered expenditures insolvency deposit with the board or with any organization or trustee acceptable to the board through which a custodial or controlled account is maintained, cash or securities that are acceptable to the board. Such deposit shall at all times have a fair market value in an amount of 120 percent of the provider networks outstanding liability for uncovered expenditures for enrollees, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. The provider network shall file a report within forty-five (45) days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section. The provisions of Section 9(2) of this administrative regulation (Deposit Requirements) shall apply to the deposit required of this section.

Section 11. Enrollment Period, Replacement Coverage in the Event of Insolvency. In the event of an insolvency of a provider network and upon order of the board, all other insurers that offer coverage shall offer enrollees of the insolvent provider network a thirty (30) day enrollment period commencing upon the date of

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insolvency. Each insurer shall offer such enrollees of the insolvent provider network the same coverages and rates that it offers to its other enrollees.

Section 12. Filing Requirements for Rating Information. (1) No premium rate may be used until a schedule of premium rates has been filed with and approved by the board. Premium rates shall not be excessive, inadequate or unfairly discriminatory.

(2) The board shall approve the schedule of premium rates if the requirements of subsection (1) of this section are met. If the board disapproves such filing, it shall notify the provider network. In the notice, the board shall specify the reasons for the disapproval. A hearing will be conducted within thirty (30) days after a request in writing by the person filing. If the board does not take action on such premium rate schedule within thirty (30) days of the filing of such schedule, it shall be deemed approved.

Section 13. Regulation of Agents for Provider Networks. (1) Any person who engages in the solicitation or enrollment of persons in a provider network shall be licensed the same as other agents of health insurance under KRS Chapter 304, Subtitle 9.

(2) An agent license is not required for a regular salaried officer or employee of a provider network who devotes substantially all of his time to activities other than the taking or transmitting of applications or membership fees or premiums, or who receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for the provider network.

Section 14. Examinations. (1) The board, or its designee, may make an examination of the affairs of any provider network and providers with whom such organization has contracts, agreements or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every three (3) years.

(2) Every provider network and provider shall submit its books and records for such examinations and in every way facilitate the completion of the examination. For the purpose of examinations, the board, or its designee, may administer oaths to, and examine the officers and agents of, the provider network and the principals of such providers concerning their business.

(3) The expenses of examinations under this section shall be assessed against the provider network being examined and remitted to the board.

(4) In lieu of such examination, the board may accept the report of an examination made by the appropriate regulatory authority of another state.

Section 15. Suspension or Revocation of Certificate of Authority.

(1) Any certificate of authority issued under these administrative regulations may be suspended or revoked, and any application for a certificate of authority may be denied, if the board finds that any of the conditions listed below exist:

(a) The provider network is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under Section 2 of this administrative regulation, unless amendments to such submissions have been filed with and approved by the board;

(b) The provider network issues an evidence of coverage for health care services which do not conform to the standard benefit plans approved by the board or charges premiums other than those approved by the board;

(c) The provider network does not provide a full range of health care services;

(d) The provider network is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(e) The provider network has failed to correct, within the time prescribed by subsection (2) of this section, any deficiency occurring due to such provider network's prescribed minimum net worth being impaired;

(f) The provider network or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(g) The continued operation of the provider network would be hazardous to its enrollees; or

(h) The provider network has otherwise failed substantially to comply with these administrative regulations.

(2) The following shall pertain when insufficient net worth is maintained. Whenever the board finds that the net worth maintained by any provider network subject to the provisions of these administrative regulations is less than the minimum net worth required to be maintained by Section 9 of this administrative regulation or that the provider network is in any other way in violation of these administrative regulations, it shall give written notice to the provider network of the deficiency or violation and require:

(a) Filing with the board a plan for correction of the deficiency or violation acceptable to the board; and

(b) Correction of the deficiency or violation within a reasonable time, not to exceed sixty (60) days.

Section 16. Rehabilitation, Liquidation or Conservation of Provider Networks. Any rehabilitation, liquidation or conservation of a provider network shall be conducted under the supervision of the board or its designee in the manner provided in KRS Chapter 304, Subtitle 33, the law governing the rehabilitation, liquidation or conservation of insurance companies. The board or its designee shall have the same authority granted to the Kentucky Commissioner of Insurance in KRS Chapter 304, Subtitle 33.

Section 17. Approval of Change of Ownership. Any change in ownership of the provider network shall be approved by the board.

JACK B. HALL, Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 12, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1995, at 9 a.m. at the Kentucky Health Policy Board Room at 909 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this 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: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4040, (502) 564-5931 (fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack B. Hall

(1) Type and number of entities affected: All provider networks.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: There is no

anticipated impact on the cost of living and employment in any geographical area in the Commonwealth as a result of this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments have been received from the public indicating that the cost of doing business will be affected by this regulation.

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

1. First year following implementation: Provider networks will be required to file applications with the Kentucky Health Policy Board for approval to operate.

2. Second and subsequent years: Provider networks will be required to file annual statements regarding financial status, ownership, and grievances.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will not result in any new costs or savings to the promulgating body.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: The Kentucky Health Policy Board will be required to evaluate and approve or deny applications from provider networks. In addition, the Kentucky Health Policy Board will review annual reports filed by provider networks.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established by House Bill 2 enacted by the 1994 General Assembly; application fees.

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

(a) Geographic area in which administrative regulation will be implemented: No public comments have been received, and no economic effects are expected.

(b) Kentucky: See above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available. KRS 304.17A-010(12) and 304.17A-100(5) require the Kentucky Health Policy Board to establish criteria for provider networks.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: One of the goals of the Kentucky Health Reform Act is to improve the health status of all Kentuckians. The provider network criteria and application process are intended to meet specified standards of financial viability and quality care.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Because certification is a mandatory precondition to the provision of services by provider networks to members of the Kentucky Health Purchasing Alliance, failure to implement this regulation would preclude the Alliance from contracting with provider networks for services.

(c) If detrimental effect would result, explain detrimental effect: See above.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation applies equally to all entities statewide.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 2, 1995

The October meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 2, 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 September 11 and 12, 1995 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman; Senators Fred Bradley, John David Preston and Nick Kafoglis; Representatives Woody Allen, James Bruce and Jimmy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

Guests: Jill LeMaster, Lori H. Flanery, Executive Branch Ethics Commission; John S. Gillig, Lucille Orlando, Kentucky Emergency Response Commission; Dave Nicholas, Board of Marriage and Family Therapists; Don L. Notter, D.V.M., Edward Ford, Department of Agriculture; H. D. Uriel Smith, Millie Ellis, Diana Andrews, Laurence W. McCabe, Natural Resources and Environmental Protection Cabinet; David L. Reichert, Sarah M. Jackson, Division of Charitable Gaming; Barbara W. Jones, Robert Powell, Jack Damron, Brenda Priestley, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Department of Education; Robert Tarvin, School Facilities Construction Commission; Larry W. Moore, Beverly Haverstock, Workforce Development Cabinet; Harlan Stubbs, Sandra Delgado, Reecie Stagnolia, Shauna King-Simms, Department for Adult Education and Literacy; Marcy D. Ches, Department of Workers' Claims; Gordon Goad, Pam Helton, Department of Alcoholic Beverage Control; Judith Walden, Department of Housing, Buildings and Construction; Pat Bishop, Robert Calhoun, Ked Fitzpatrick, Karen Doyle, Cabinet for Human Resources; Nancy Galvagni, Kentucky Hospital Association; Keith Black, Barbarba Black, The Union Light Heat and Power Co.; Dan Langford, Bingo Info Magazine; Lois Carroll, National Kidney Foundation of Kentucky; Dottie Krause, CCI Bingo; Shirley Wiseman, Portland Little League; Adelaide Bowman, St. Basil; Bobby Ernsperger, St. Bartholomew; William S. Henninger, F.O.P. #25; Randy Smith, GOPM; Roger Grim, Kentucky Association of Career Colleges & Schools; Sue Ellen Stuebing, John Kington, American Cancer Society; Richard Tanner, Kentucky Magistrates & Commissioners; John Brazel, Kentucky Chamber of Commerce; Carl Breeding, Breeding, McIntyre & Cunningham; Libby Marshall, Kentucky School Boards Association.

The Subcommittee determined that the following administrative regulations did not comply with statutory authority:

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. Kevin Noland, General Counsel, Kentucky Department of Education and Tom Willis, Associate Commissioner in the Office of District Support Services spoke in favor of the administrative regulation.

Libby Marshall, Kentucky School Boards Association, spoke against the administrative regulation.

Mr. Noland stated that: (1) this administrative regulation is an amendment of an administrative regulation that was promulgated approximately 3 years ago; (2) a statute requires that the state board adopt an administrative regulation setting a formula for allocation of funds to school councils; (3) this administrative regulation was adopted three years ago and a work group was put in place to come up with amendments; (4) the work group consisted of the: (a)

Kentucky Association of School Superintendents; (b) the Association of School Administrators; (c) the Kentucky Education Association; (d) the Kentucky Association of School Councils; (e) the Office of Educational Accountability; (f) the Kentucky Department of Education; and (f) the Kentucky School Boards Association; (5) the group worked diligently and was able to reach consensus on all but 2 points; (6) the companion administrative regulation 702 KAR 3:246 is almost identical except for one section; (7) 702 KAR 3:246 is for those schools whose accounting function is operated by computer; (8) the State Board of Education approved both administrative regulations; (9) in Section 3 of the administrative regulation there is a list of 14 accounts kept at the district level which aren't allocated to school councils; (10) there is clearly statutory authority for this administrative regulation; (11) Section 7 provides that if there are left over nonallocated funds, then the council can submit a list of projects that need funding to the school board and the school board must choose projects to be funded from the school council list.

Ms. Marshall stated that: (1) Section 7 addresses discretionary funds of the school district; (2) discretionary funds remain after the allocation is made to school councils pursuant to Sections 1 through 6 of this administrative regulation; (2) prior to this amendment, discretionary funds were allocated according to the wishes of the local school boards; (3) this administrative regulation removes that discretion from the local board and therefore violates the provisions of KRS 160.345 which requires the local board of education to adopt policies on discretionary funds; (4) a copy of the statute has been distributed and highlighted for the subcommittee; (5) KRS 160.345 specifically addresses those discretionary funds that are to be allocated by the local board of education; (6) this administrative regulation preempts the statute by regulating in an area specifically delegated to the local boards of education; (7) in the preliminary sections of this administrative regulation allocations are made for various items on a district wide basis; (9) one of those items is district level instructional services; (10) this item would appear to give the local board of education some opportunity to allocate funds for district level instructional services; (11) the Department of Education has interpreted what district level services are, so narrowly, however, that many of the exemplary programs currently in place at the district level can no longer be funded; (12) unless the local board of education goes to each school council and the council agrees to add certain special allocations to the council's Section 7 list, then the program cannot be continued; (13) an example is the reading recovery program, which is very successful but also very costly; (14) this program does not serve all schools in the district and is disqualified from being considered for funding, because the board does not have the ability to use the left over funds; (15) the tax levying authority which is the duly elected local board of education, has virtually no discretion with respect to district funds; (16) the board is accountable to the electorate for taxes levied, but has no discretion when it comes to allocation of those funds.

Mr. Noland responded that: (1) in Section 3 of the administrative regulation there is a list of 14 items over which the board has authority in allocation; (2) the statute upon which this administrative regulation is promulgated states that: "the state board shall adopt an administrative regulation to establish a formula for distributing district funds to school councils."; (3) Section 7 provides for a balance between the interests of school councils and school boards; (4) the section could provide that the Section 7 funds be distributed to school councils based upon average daily attendance without leaving any discretion to the school board; (5) in Section 7 the school council gives a wish list to the local board of education who then selects items from the list to be funded; (6) the statute that relates to

discretionary funds provides that the local school board shall have a policy dealing with school budget and administration, including discretionary funds; (7) the same provision of the statute also provides for allocation of funds to school councils; (8) the State School Board has provided that if funds are left after allocation of money in the 14 categories of funds that don't go to school councils, then the balance is allocated to the councils; (9) the State Board acted wisely in balancing those interests as it did in Section 7.

Mr. Willis stated that: (1) the statute relating to school councils in general provides that the council is responsible for curriculum and those type things in the school; (2) this administrative regulation has been in the process for 18 months; (3) there was never any intent to take the local school board out of the process; (4) most people on the advisory committee agreed that school councils should support programs to be funded by Section 7 funds; (5) if the council does a needs assessment and finds a successful program, certainly they would want to continue the funding of that program; (6) prior to the promulgation of this administrative regulation, the provision stated that these funds would be distributed based on pupil needs designated by the local school board; (7) this amendment provides that pupil needs are to be identified by the school council and then designated by the board; (8) the administrative regulation merely adds the council in the process; (9) the council tells the board what its needs are, and the board allocates the funds accordingly; (10) the board can choose from the list submitted by the council.

Representative Lee asked if the school board had the authority to turn down all the council's requests under Section 7 of the administrative regulation.

Mr. Willis responded that: (1) the funds may be disbursed in 2 ways pursuant to Section 7; (a) on a per pupil basis district wide; or (b) allocated pursuant to the list submitted to the board by the school council.

Representative Lee stated that: (1) the board should have final authority on allocation of funds pursuant to Section 7; (2) the board is duly elected by the people and should be able to dictate whether money should be spent district wide or not spent at all.

Mr. Willis responded that the board must allocate the funds under Section 7 to school councils.

Representative Lee asked: (1) why the language in Section 7 was amended to require funds to be allocated based on needs "identified by school councils" when previous language provided that funds were to be allocated based on pupils needs "as designated by the local school boards."; and (2) why ultimate authority was removed from the school board to allocate the funds pursuant to Section 7.

Mr. Willis responded that the change in the language means that if there is \$100,000 left to allocate, the school board must: (1) allocate the money on a per pupil basis, district wide; or (2) distribute the money based upon a needs assessment prepared by the local school council.

In response to questions from Representative Lee, Mr. Willis stated that: (1) under the old language of Section 7 a board could decide to fund whatever program it chose; (2) under the new language the board must fund a program based on a list of options provided by the school council; (3) the council must be involved in letting the board know what programs should be funded in a particular school; (4) the council is made a part of the selection process pursuant to the new language in Section 7.

Representative Lee stated that: (1) it appeared the local board was not the final authority in the allocation of funds; and (2) he was inclined to make a motion to find the administrative regulation deficient based upon his understanding of what KRS 160.345 requires; (3) the local school boards are elected by the people of Kentucky; (4) they make the hard decision about raising taxes in that district; (5) the school council answers to no one about how tax dollars are spent; (6) the board should have the final authority in distributing tax dollars; (7) it was not his intent, when he voted for school reform, to give the school councils authority over allocation of

tax dollars; ; (8) he does not believe it was the intent of the General Assembly to give that kind of power to the school councils; and (9) if this administrative regulation is intended to supersede the authority of the local board, then this administrative regulation should be found deficient, and the statute clarified to specifically give that authority to school councils, if the General Assembly so desires.

Mr. Willis responded that: (1) if you go through the allocation formula pursuant to this administrative regulation, by the time you get to Section 7, the amount of money to be allocated is extremely small; (2) 95 to 98 percent of the money that's going to councils is allocated in the first 6 sections of the administrative regulation; (3) Section 7 only comes into play if there is money left; (4) the board can simply allocate the money district wide on a per pupil basis if it chooses; (5) if it does not allocate the funds district wide, the board has the option of selecting which programs to fund based upon a list submitted by the school council; (6) prior to this change the board could choose what programs to fund on its own; (7) under this new provision, the board can still choose programs to fund, but the choices are limited by a list of needs submitted by the school council.

Representative Lee stated that: (1) the money allocated pursuant to this administrative regulation comes from tax dollars; (2) the school councils should not be in the business of setting tax rates; (3) this administrative regulation tells the school boards, who are responsible for setting tax rates and accountable for those rates that they cannot allocate the funds if the school council says they cannot spend the money.

Mr. Willis responded that: (1) this administrative regulation has nothing to do with tax rates or what money is raised in the district; (2) when he was principal of a local school, every year the superintendent asked for a list of things his school needed; and (3) if there was extra money, then those items were funded.

Representative Lee stated that: (1) he thought that submitting a list to the local school board was a good idea; (2) if worthy programs did not get funded then the local school board member should not be re-elected; (3) the school council should not be able to mandate what programs are to be funded by submitting a list of needs.

Representative Lee made motion to find the administrative regulation deficient, and the motion was seconded by Representative Bruce.

Chairman Crenshaw stated that he: (1) did not want to stop a vote on the motion; and (2) wanted to make sure that both he and Senator Kafoglis got to ask questions.

Representative Lee stated he had no objection to further discussion.

Senator Kafoglis stated that he needed clarification about the amount of discretionary funds to be distributed pursuant to this administrative regulation.

Mr. Willis responded that: (1) he could not give an exact amount that would be distributed; (2) the allocation was made on March 1; (3) over half the school districts that submitted figures on money allocated showed no allocation pursuant to Section 7; (4) in districts that allocate 12 to 15 million dollars in other categories, there would often be less than \$100,000 left to allocate pursuant to Section 7; (5) in the vast majority of districts the allocation was extremely small.

Senator Kafoglis asked: (1) if the purpose of the administrative regulation was to ensure those funds be distributed equitably among the schools; (2) if the local school boards would show favoritism to one school or program; (3) how these discretionary funds have been spent in the past; (4) is this proposal an attempt to get an assessment of needs across the district.

Mr. Willis responded that: (1) Section 7 of this administrative regulation is an attempt to let the school council provide the board with a needs assessment that can be used in allocation of excess funds; (2) the board can by pass the needs assessment by allocating the funds on a per pupil basis, district wide; (3) most local boards have taken any excess funds and allocated them on a per pupil basis; (4) other local boards have allocated specific funds on especially

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worthy programs, like technology; and (5) under section 7 funds could be allocated to every school or just to one school depending on the needs; (6) this proposal is an attempt to get proposals from all schools and then ask the board to allocate funds from those lists.

Ms. Marshall stated that: (1) Section 7 of this administrative regulation goes farther than simply requiring input from the local schools; (2) the entire budget of the school is to be addressed by the initial allocation; (3) instructional needs are to be met by this budget; (4) the local board has no approval power over a local school's budget or even individual expenditures by that school; (5) local boards have virtually conceded that school budgets are not accountable to the local board; (6) the boards are simply asking that Section 7 discretionary funds remain with the local boards to allocate as they choose; (7) the reading recovery and preschool programs are examples of Section 7 allocations; (8) these programs that now are funded throughout the state, were started through Section 7 allocations; (9) a board could no longer fund these type programs, without being able to use discretionary funds.

In response to a question from Senator Kafoglis, Ms. Marshall stated that the local school boards would agree to an amendment that would allow the submission of lists by the school councils but would leave ultimate authority to allocate Section 7 funds to the local school board.

Mr. Noland stated that: (1) there is a list of 14 types of expenditures that never get to the school councils for consideration; (2) one type of expenditure provides for "instructional services provided to all schools in the district", or "categorical programs"; (3) there is a process at the district level to provide funding for programs like Ms. Marshall speaks of; (4) any amendment of Section 7 would need to be discussed with the State Board of Education which meets this week; (5) there were no comments received at the public hearing concerning this administrative regulation; (6) the Department was unaware the Section 7 allocation would be an issue at this meeting.

In response to questions from Senator Kafoglis, Mr. Willis responded that: (1) there is an opportunity in earlier sections of the administrative regulation, to fund the type of program Ms. Marshall is speaking about; (2) in Section 2, the local board can set money aside for "categorical programs" which would include special worthy programs; and (3) this money can be set aside before allocating any money for districts.

Ms. Marshall responded that: (1) there are 2 stipulations about what constitutes a "district level instructional service"; (2) one stipulation is found in this administrative regulation, which provides that the service must go to all schools; (3) special programs rarely go to all schools; (4) the program may go to: (a) all elementary schools; (b) all middle schools; or (c) all high schools; (5) the only program that goes to all schools is the "DARE" program; (6) the other stipulation is found: (a) in the Department's guidance manual on school based decision making, called "Synergy"; and (b) in the program advisory manuals that contain numerous interpretations of law; (7) these documents are considered advisory but school districts are under enormous pressure to follow them; (8) the other requirement found in those documents states that once a program requires a school based staff person to implement it, then the program is no longer a district level program, but is considered a school based program; (9) there are virtually no instructional programs that don't require school based personnel for implementation; (10) the Department's interpretations behind the language virtually eliminate worthy programs from consideration.

Chairman Crenshaw stated that: (1) he had several questions but did not want to prolong the discussion; (2) Senator Kafoglis has indicated his preference for a possible compromise; (3) it would appear to be a good idea to defer this administrative regulation for a month in the hopes that a compromise can be reached; (4) if there is no hope of a compromise then the subcommittee may want go ahead and vote on the motion.

Mr. Noland stated that: (1) the Department is willing to discuss

the matter; (2) the State Board of Education is meeting over the next two days; (3) this matter can be brought before the board at that time; (4) this administrative regulation was filed as an emergency because of the starting of the new school year; (5) the Department would like to leave the administrative regulation in effect and simply work on revising the ordinary administrative regulation; (6) the Department is not willing to defer the administrative regulation at this time; and (7) there should be a vote on this administrative regulation.

Representative Lee stated that his motion was to: (1) find the administrative regulation deficient; and (2) refer the matter to the appropriate interim committee for drafting of clarifying legislation; and (3) introduction in the 1996 session of the General Assembly.

Representative Bruce stated that: (1) he had seconded Representative Lee's motion; and (2) agreed to amend his second to refer the issue to the appropriate standing committee for drafting of clarifying legislation.

Representative Bruce called for a roll call vote.

The motion to find the administrative regulation deficient and refer the issue to the appropriate standing committee for drafting of clarifying legislation was adopted.

Senator Kafoglis wished to explain his "pass" vote and stated that: (1) there appears to be merit on both sides of the argument; (2) without knowing more about the issue it is impossible to determine who is correct; and (3) it would have been much better to defer this administrative regulation and attempt to reach a consensus.

702 KAR 3:246E. School council allocation formula: KETS district administrative system chart of accounts. Ms. Marshall stated that she was attempting to get clarification concerning this administrative regulation as well.

Chairman Crenshaw stated that: (1) Mr. Noland would address the administrative regulation; and (2) Ms. Marshall could respond.

Mr. Noland stated that: (1) this administrative regulation is similar to 702 KAR 3:245, but it applies to those school districts that use a computer accounting system; (2) there is a difference in Section 3, only as to the accounting codes used.

Representative Lee asked if this administrative regulation did the same thing that 702 KAR 3:245 did regarding allocation of Section 7 funds.

Mr. Noland responded that: (1) this administrative regulation follows the statutory mandate to set out a formula for allocation of funds to school councils; (2) the statute was voted on by the General Assembly who were elected by the people; and (3) there are 14 types of funds that stay at the district level.

Representative Lee asked if the school council has the authority to supersede the local board to spend discretionary funds in this administrative regulation.

Mr. Noland stated that he did not believe there were discretionary funds that could be allocated by the school council.

Representative Lee stated that: (1) he did not object to the administrative regulation as long as there were no discretionary funds to be allocated according to the wishes of school councils; (2) he felt this entire issue should be clarified in the next session of the General Assembly; (3) each member of the General Assembly should be allowed to vote on whether or not the local school boards have the authority to determine how discretionary funds are allocated; (4) the local school boards are elected by the people and have the responsibility to raise taxes when necessary; (5) the local school board should also have the final say in how any discretionary funds are allocated; (6) if the General Assembly wants to give specific authority to school councils to spend appropriated funds then the General Assembly should vote to do so and should notify the public that they are granting this authority to school councils.

Chairman Crenshaw asked: (1) if the statutory authority for this administrative regulation comes from the Kentucky Education Reform Act (KERA); and (2) if KERA sets the sight based council as the primary authority for proper operation of the school.

Mr. Noland responded that: (1) the statutory authority for this

administrative regulation comes for KRS 160.345(8); (2) that statutory provision states that the state school board must promulgate an administrative regulation setting the formula for distribution of school funds to each school council; (3) KRS 160.345(2)(i),(g) and (h) set out a list of areas that must be allocated to school councils; (4) Section 3 of this administrative regulation sets out the 14 types of allocations that do not go to school councils.

Chairman Crenshaw asked whether it was likely that the type of programs mentioned by Ms. Marshall would not be funded by the local schools.

Mr. Noland responded that: (1) it was very unlikely that successful programs would not be put on school council lists for allocation; (2) the Department has found that a great majority of local boards and school councils work well together; (3) in the majority of cases there is excellent communication between the two entities; (4) if a program is working then it certainly would make sense that everyone would support the program; (5) in any event, those type of programs are funded before Section 7 is even used; (6) most districts have very little, if any, Section 7 funds to allocate.

Chairman Crenshaw stated that: (1) it appears that the local school board can allocate Section 7 funds on a per pupil basis without consulting the school council list of programs; (2) if the school board does not allocate the funds on a per pupil basis, then the board must allocate the funds by selecting a program from the list provided by the school council.

Chairman Crenshaw asked if the school board could reject a council's list and either ask that another list be submitted, or that certain other items be added to the list.

Mr. Willis responded that: (1) the board can certainly ask for further input from the school council, or that items be added to the list; (2) the list does become final on March 1; (2) up until March 1, a principal could bring additional items to the council or to the board; and (3) there should be flexibility when it comes to adding items to the list.

Ms. Marshall stated that: (1) Chairman Crenshaw is correct that school councils will likely place successful programs on its list for funding; (2) there is tension between the council and the board, because of the school's responsibility for assessment results; (3) if there is a small population of students in a school that could be helped by a very costly program, but the program doesn't have a track record, it would be very difficult to ask a school council to allocate significant money to a small number of students; (4) the reading recovery program is a good example of a program that affects a small number of students, but is highly successful; (5) at the district level there may be a much greater number of students in need of those services.

Chairman Crenshaw asked if these type of programs wouldn't be utilized in every school in the district.

Ms. Marshall responded that: (1) many of these programs are not used on a district wide basis; (2) this administrative regulation prohibits the local school board from making a commitment of services for the school district; (3) an example of the problem might be in Scott County, where Toyota would come to the local school board and ask what could be done for children of Toyota workers who would be concentrated in the eastern part of the County; (4) if Toyota asked for a commitment of services for those children, the local board would be unable to make such a commitment; (5) the school board would have to tell Toyota to negotiate with each local school council in that area; (6) the school council that commits funds one year, may not be the same council next year; and (7) the Department's stipulations on a district wide policy makes the requirements so stringent that a local board cannot influence these type decisions.

Mr. Noland responded that the issues Ms. Marshall raised have not occurred in the day to day operation of the school systems.

Representative Lee asked if the subcommittee was still considering 702 KAR 3:245E.

Chairman Crenshaw stated that the subcommittee was consider-

ing 702 KAR 3:246E and not 702 KAR 3:245E.

Ms. Marshall stated that both 702 KAR 3:245E and 702 KAR 3:246E are basically the same administrative regulation.

Mr. Willis responded that: (1) both administrative regulations are essentially the same; (2) the administrative regulations reflect the use of a different accounting system; (3) the same language in Section 7 appears in both.

Representative Lee made a motion that: (1) 702 KAR 3:246E be found deficient for the reasons discussed in this administrative regulation and in the discussion on 702 KAR 3:245E; and (2) the administrative regulation be referred to the appropriate interim committee for drafting of clarifying legislation to be enacted by the 1996 Session of the General Assembly.

Representative Bruce seconded the motion and called for a roll call vote.

The motion to find the administrative regulation deficient and refer the issue to the appropriate standing committee for drafting of clarifying legislation was adopted.

Senator Kafoglis asked if it took four votes to find the administrative regulation deficient.

Chairman Crenshaw stated that if a quorum was present then a majority of those present and voting is sufficient to find the administrative regulation deficient.

Representative Bruce asked that staff notify the subcommittee if two administrative regulations are identical.

Chairman Crenshaw responded that he did not disagree with Representative Bruce, however, the issue relating to Section 7 of this administrative regulation was not brought to the attention of anyone until this morning.

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.

902 KAR 14:090 (& E). Air ambulance providers.

Karen Doyle, Office of Personnel and Budget, stated that it appeared that a conflict in applicable statutes, KRS Chapter 216B and KRS 211.950, gave rise to the issues raised concerning the emergency administrative regulations governing the subject matter governed by these ordinary administrative regulations. In response to a question by Chairman Crenshaw, Robert Calhoun, Emergency Medical Services Branch, stated that amendments made as a result of the public hearing on these administrative regulations affected: (1) their contents; and (2) did not relate to, or resolve, the statutory conflict that gave rise to the Subcommittee finding of deficiency on the emergency administrative regulations. In response to a question by Chairman Crenshaw, Ms. Doyle stated that: (1) under KRS Chapter 216B, the Cabinet had the authority to promulgate administrative regulations establishing the emergency medical and ambulance service providers categories established by the administrative regulations, as it would for the various categories of nursing homes, such as intermediate care, skilled nursing; (2) while KRS 211.950 establishes the ambulance category, KRS Chapter 216B requires regulation of each category; and (3) KRS 211.950 notwithstanding, non-emergency health transportation ("NEHT"), level of care is specific in KRS Chapter 216B, and requires the Cabinet to promulgate administrative regulations for the various NEHT services.

Representative Lee stated that it appeared the problem of defining ambulances that was discussed at previous Subcommittee meetings still existed. Mr. Calhoun stated that the Subcommittee had determined that the statutory definition of ambulance in KRS Chapter 211 that is all-inclusive should not be subdivided, even though KRS Chapter 216B provides for subdividing levels of ambulance services. Representative Lee stated that he believed that, at previous meetings, the Subcommittee had determined that the General Assembly should resolve the conflict by legislation. Ms. Doyle and Mr. Calhoun agreed, and stated that they intended to work with the Interim Joint Committee

on Health and Welfare, the General Assembly, and the Department of Transportation which had similar issues with regard to statutes, and with administrative regulations found deficient by the Subcommittee, governing ambulances, to resolve the conflict.

Representative moved that the Subcommittee find these administrative regulations deficient and that they be referred to a standing committee for clarification by legislation during the 1996 Regular Session.

Ms. Doyle stated that the Cabinet: (1) had deferred its administrative regulation governing payments under Medicaid; and (2) hoped that amendments by the General Assembly would not result the inability to provide a lower level of transportation, at an affordable cost, for those who need a lesser level of care while being transported. Chairman Crenshaw stated: (1) while the Subcommittee had attempted to assist interested parties reach an agreement that would provide this type of transportation, the Subcommittee had been told repeatedly that requirements prohibited it; (2) the Subcommittee had never advocated that use of the less expensive vehicles be prohibited; and (3) the Subcommittee had been informed by providers of the less expensive service that they could not operate under costs imposed by each of the classifications established by the Cabinet. Ms. Doyle stated that: (1) it appeared that one of the NEHT providers wanted the ability to be an ALS and BLS provider; (2) this would require a Certificate of Need, which is governed, controlled, and issued by the Health Policy Board rather than the Cabinet; (3) it appears that this NEHT provider should be in the next review under the Certificate of Need review process to become an ALS or BLS provider, which could resolve the question if the issue related only to one provider; (4) all parties want to prevent an escalation in cost of the basic transportation service; and (5) the issue of the right to provide a level of service that is higher than the level of service of which a license was granted is a Certificate of Need issue.

Chairman Crenshaw stated that testimony by providers at previous Subcommittee meetings regarding these issues was that they: (1) wanted to provide the lower cost level of services that many needed; (2) the definitions prevented them from qualifying in the categories established; (3) could not qualify under the conditions established under the Certificate of Need process; and (4) could not be compensated under Medicare because of applicable federal regulations. Chairman Crenshaw asked agency personnel whether these administrative regulations had been amended to permit these providers to provide the medical transport service. Representative Lee agreed, and stated that if the definition of ambulance in the administrative regulations are not changed, the providers have stated that they would not be compensated for the service.

Mr. Calhoun stated that: (1) payment was the issue; (2) these providers had been licensed as a lower-level medical provider requiring less staff and medical equipment; (3) payment was questioned 2 years ago, when Medicare determined that their services under the lower-level medical provider license was not eligible for Medicare reimbursement; and (4) Cabinet administrative regulations still permit the lower-level service. Representative Lee stated that: (1) Medicaid's interpretation of federal requirements was based on the Cabinet's administrative regulations establishing definitions and categories, and on its determination of whether the provider was eligible for payment; and (2) if the Cabinet's administrative regulations are not amended, Medicare will continue to rely, and base its determination not to pay, on state administrative regulations. Mr. Calhoun stated that: (1) while Medicare had paid for the lower-level service for many years, it had made the determination that the lower-level service did not meet its requirements for Medicare reimbursement; (2) Cabinet action did not result in the Medicare determination; and (3) the Medicare determination appears to have been caused by complaints made some competitors which resulted in a review of the service, and its compliance with federal requirements, by Medicare.

Representative Lee stated that he had made the motion to find

the administrative regulations deficient because: (1) it appeared that the administrative regulation had not changed since the providers testified before the Subcommittee; (2) the issues raised should be addressed and clarified by the General Assembly at the 1996 Regular Session; (3) without such resolution, the Cabinet would be precluded from promulgating an administrative regulation that conflicted with the statute defining ambulances until the next Regular Session; and (4) clarification of the issues is the end sought by the providers and him.

Chairman Crenshaw: (1) stated that: (a) while some people who have testified before the Subcommittee have stated that the problem stems from Medicare's determination, while others have stated that the problem stems from state administrative regulation; (b) the Subcommittee is not concerned with assigning the blame for the problem; and (c) does not want to find the administrative regulation deficient; and (2) asked if the state could consult with Medicare to determine whether a waiver were possible to resolve the issue by allowing these providers to provide the low cost service that all parties agree should be provided. Ms. Doyle stated that the Cabinet agreed that provide low cost medical transport services were necessary and desirable, and wanted to insure that life, health, and safety issues were addressed.

Representative Bruce stated that provision of low cost medical transport services would reduce the necessity for Cabinet expenditures and reimbursements.

Explaining his vote on the motion to find this administrative regulation deficient, Senator Bradley stated that: (1) the problem was a long-standing problem, stemming in part from questions of jurisdiction between the Cabinet and Transportation; all problems rising from these administrative regulations could, and should, be resolved by General Assembly review and legislation; (3) the statutes should clearly establish conditions and categories; (4) the conflicts could be resolved only through legislative action; and (4) after amendment of the applicable statutes to resolve the issues, future administrative regulations would not give rise to the problems or issues before the Subcommittee each time they are reviewed.

The Subcommittee approved a motion finding 902 KAR 14:080 deficient.

With regard to 902 KAR 14:090, the Subcommittee approved Representative Lee's motion that: (1) it be found deficient for the same reasons 902 KAR 14:080 had been found deficient; and (2) the Legislative Research Commission be requested to refer the issues raised by these administrative regulations to the appropriate legislative subcommittee for recommended legislation at the 1996 Regular Session of the General Assembly.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

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. This administrative regulation was amended to add a definition as required by KRS 13A.222.

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure. This administrative regulation was amended to: (1) add a citation in the Statutory Authority section; and (2) delete the phrase "including but not limited to".

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.

Dave Nicholas, Director, Division of Occupations and Professions, stated that the amendments: (1) of each of these administrative regulations corrected KRS Chapter 13A drafting and formatting errors;

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(2) to 201 KAR 32:020 established standards for equivalent courses of study; and (3) to 201 KAR 32:030: (a) corrected a statutory citation; and (b) amended the NECESSITY AND FUNCTION paragraph to clearly state the necessity for and the function served by the administrative regulation.

In response to questions by Representative Allen, Mr. Nicholas stated that: (1) 201 KAR 32:030: (a) did not raise fees; and (b) established the initial fees as authorized and required by the 1994 General Assembly; (2) fees were first charged under the emergency version of this administrative regulation, which contained the same fees imposed by the ordinary version of this administrative regulation; (3) the fee for initial certification is \$200; and (4) 201 KAR 32:030 provided for a refund of \$150 of the \$200 initial certification fee if an application was denied.

In response to questions by Representative Lee, Mr. Nicholas stated that: (1) the Board had not established the recertification fee because, although required by KRS 335.340 to establish the fee: (a) the initial certifications are for a 3 year period; (b) the first recertifications would not occur before 1998; (c) the Board has not determined how much it will need to charge for recertification; (d) the fee would depend on the number of certificants; (e) to establish a recertification fee now could result, as it had in the past with regard to another fee, in a fee that: 1. was too high; 2. had generated more money than was needed for Board operations; and 3. after determination of the number of recertifications and the amount of revenue required for operations, probably would require amendment of the administrative regulation to reduce the fee before collection in 1998; (f) board operating funds are derived from board revenues such as fees which means that charging too high a fee would result in a surplus over expenditure requirements and the need to reduce fees and spend down the surplus; and (g) KRS 335.340 did not establish a deadline for the establishment of a recertification fee, and was not violated because the fee for recertification would be established well in advance of the first applications for recertification.

Representative Lee stated that: (1) KRS 335.340 required the establishment of a recertification fee; (2) the title of 201 KAR 32:030 included recertification fees; and (3) it appeared that the recertification fee could be established now, and amended if it proved to be too high after the number of recertifications and operating expense needs of the Board had been determined. Mr. Nicholas assured Representative Lee that the fee for recertification would be established well in advance of the first application for recertification, and that prior to its implementation, legislative subcommittees would have sufficient time to review the fee.

Justice Cabinet: Department of Corrections: Class D Felons

501 KAR 2:020. Definitions. This administrative regulation was amended to: (1) correct a statutory citation; and (2) add a cross reference to another administrative regulation in which an item was incorporated by reference.

501 KAR 2:040. Waivers. This administrative regulation was amended to: (1) comply with the drafting requirements of KRS 13A.222 and the format requirements of KRS 13A.220(4); and (2) provide that transfers of a felon to a county jail by the Community Center Program Manager shall be made as beds become available.

501 KAR 2:050. Transfer requests. This administrative regulation was amended to: (1) comply with the drafting requirements of KRS 13A.222 and the format requirements of KRS 13A.220(4); (2) delete Section 2 which: (a) authorized the transfer of Class D felons from county jails to the state prison system when the number of jail beds had been exceeded; and (b) required: 1. a transfer on the proportional basis of a jail's number of Class D inmates to the statewide number of Class D inmates; and 2. consultation with jailers as to which inmates would be transferred; and (3) incorporate by reference the "Request for Transfer" form.

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Material

incorporated by reference in this administrative regulation was amended to comply with KRS 13A.222(4)(d) by cross referencing the definitions established by KRS 218A.550

501 KAR 6:130. Western Kentucky Correctional Complex. This administrative regulation was amended to correct an inadvertent deletion.

School Facilities Construction Commission: Procedures

750 KAR 1:010. Commission procedures. This administrative regulation was amended to correct a typographical error to provide that debt service schedules "shall always have 20 years of payments."

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:030 & E. Employer contributions. The Necessity and Function paragraph and Section 1 of this administrative regulation were amended to comply with KRS 13A.222(4)(b) drafting requirements.

787 KAR 1:060 & E. Separation for cause; reports. This administrative regulation was amended to comply with: (1) KRS 13A.220(4) format requirements; and (2) KRS 13A.222(4)(b) drafting requirements.

787 KAR 1:070 & E. Reasonable time for protesting claim. This administrative regulation was amended to comply with KRS 13A.222(4)(b) drafting requirements.

787 KAR 1:090 & E. Claimant's reporting requirements. This administrative regulation was amended to comply with KRS 13A.222(4)(b) drafting requirements.

787 KAR 1:100 & E. Week of unemployment defined. This administrative regulation was amended to: (1) clarify the Necessity and Function paragraph and Section 1 to clearly prescribe the time parameters for a "week of unemployment".

787 KAR 1:190 & E. Recoupment and recovery. This administrative regulation was amended to: (1) clarify language in the Necessity and Function paragraph relating to the term "departmental error"; (2) comply with KRS 341.415(1) by establishing standards for recoupment and recovery of benefit overpayments when there has been a "departmental error".

787 KAR 1:240 & E. Fraud disqualifications. Section 1 of this administrative regulation was amended to comply with KRS 13A.222(4)(b) drafting requirements.

787 KAR 1:270 & E. Covered employment. Section 1(1), (2), and (3) of this administrative regulation were amended to comply with KRS 13A.222(4)(b) drafting requirements.

787 KAR 1:290 & E. Contract construction rates. Section 1 of this administrative regulation was amended to comply with KRS 13A.222(4)(b) drafting requirements.

Employment Services

787 KAR 2:020 & E. Confidentiality of records of the Department for Employment Services. Section 1 of this administrative regulation was amended to comply with KRS 13A.222(4)(b) drafting requirements.

787 KAR 2:030 & E. Classifying a person as unemployed; appeals. This administrative regulation was amended in Sections 2(2), 3(1), 4(3) and 4(4) to comply with KRS 13A.222(4)(b) drafting requirements.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:150. Workers' compensation alternative dispute resolution systems. This administrative regulation was amended to delete the reference to "rules" in the Necessity and Function section.

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. This administrative regulation

was amended as follows: (1) statutory citation in the NECESSITY AND FUNCTION paragraph was corrected; and (2) Sections 1(2) and 2(4) were amended to comply with the drafting requirements of KRS 13A.222

Electrical Inspectors

815 KAR 35:030. Kentucky certification of electrical contractors. This administrative regulation was amended to: (1) Delete the definition for "Department" defined by statute; (2) clarify that "Upon cancellation of the certification, the revival fee paid on or after January 1 shall be 50 dollars."; (3) delete improper articles; and (4) insert "shall" to designate mandatory requirements.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Executive Branch Ethics Commission: Ethics Commission

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

Economic Development Cabinet: Department of Agriculture: Livestock Sanitation

302 KAR 20:115E. Vesicular stomatitis. Dr. Don L. Notter, State Veterinarian, and Rusty Ford, Equine Programs Manager, Kentucky Department of Agriculture, spoke in favor of the administrative regulation.

Dr. Notter stated that: (1) the vesicular stomatitis administrative regulation was drafted in response to an outbreak of the disease in Texas, Arizona, New Mexico, Colorado and Utah; (2) the administrative regulation was proposed to control movement of Kentucky livestock from known affected states.

In response to questions from Senator Kafoglis, Dr. Notter stated that: (1) the disease is transmitted primarily by biting insects; (2) to a lesser degree transmission occurs when animals come in contact with one another or in contact with contaminated equipment.

In response to a question from Representative Allen, Dr. Notter stated that he had worked for the Department since January 1988.

In response to questions from Representative Allen, Mr. Ford stated that he: (1) had worked for the Department for 12 years; and (2) was Senator Ed Ford's son.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:065. Conformity of general federal actions.

Justice Cabinet: Division of Charitable Gaming: Charitable Gaming

Sarah Jackson, Assistant Director, Division of Charitable Gaming, and David Reicker, counsel to the Division, spoke in favor of the administrative regulations.

Kevin Rapier spoke on behalf of the Kentucky Charitable Gaming Association (KCGA).

500 KAR 11:030 & E. Charity game ticket standards. Ms. Jackson stated that: (1) this administrative regulation:(a) deals with charity game ticket standards; and (b) sets standards for construction, distribution and rules of play ; (2) charity game tickets are also known as "pull tabs" in the industry; (3) a hearing was held on the emergency administrative regulation in April that was attended by well over 100 individuals; (4) following the hearing on the emergency administrative regulation, the Charitable Gaming Advisory Commission (CGAC): (a) set a work session for the end of June; (b) spent an entire day reviewing all the administrative regulations before the subcommittee; and (c) recommended changes as a result of the notice of intent hearing; (5) the ordinary administrative regulations were filed and a public hearing held on August 21, 1995; (6) most objections raised at the notice of intent hearing were dealt with when the ordinary administrative regulations were filed; (7) of the 50 people that attended the public hearing on this administrative regulation only

6 people made comments; (8) this administrative regulation was not amended as a result of the August 21 public hearing because the ordinary administrative regulations addressed most of the issues raised.

Mr. Rapier stated that: (1) the KCGA is very pleased with this administrative regulation over all; (2) there is one area of concern; (3) Section 8 should be amended to allow volunteer workers to play charity game tickets; (4) the Division allows volunteer workers to play bingo after they have completed their work, but does not allow those workers to play charity game tickets; (5) this policy is inconsistent; (6) the Division has taken the position that a volunteer worker cannot continue to work in any capacity once the individual begins to play bingo; and (7) if the volunteer worker is considered a player for purposes of playing bingo then that volunteer should also be authorized to play charity game tickets.

Ms. Jackson responded that: (1) the CGAC met and considered the issue raised by Mr. Rapier; (2) there is a distinction between playing bingo and playing charity game tickets; (3) charity game tickets: (a) are sold by aproned workers who walk the floor while bingo is being played; (b) are the greatest generator of cash; (c) cost between 50 cents and 1.00 each; and (d) are sold throughout the night; (4) bingo cards are sold in a pack at the beginning of the night for a flat fee of approximately \$12 to \$15; (5) there is no additional money collected for bingo; (6) the ban on volunteers playing bingo has been lifted; (7) it could be argued that the bingo caller could play bingo at the same time he is calling; (8) the CGAC felt that the volunteer ban should not be lifted on playing charity game tickets; (9) the problem with allowing workers to play charity game tickets is the amount of cash handled by workers throughout the night; (10) there is an appearance of impropriety that could compromise the integrity of gaming if workers are allowed to play charity game tickets.

Representative Bruce pointed out that: (1) even though Mr. Rapier would like to see the administrative regulation amended; (2) only the Division of Charitable Gaming can offer amendments.

Chairman Crenshaw stated that the subcommittee could also offer amendments.

Representative Bruce responded that the agency would have to agree to any amendment offered.

Subcommittee staff pointed out that: (1) only the subcommittee and the agency can offer amendments; and (2) both parties must agree to any amendment.

Representative Bruce stated that there was no sense to offer an amendment if the agency would not agree to that amendment.

Ms. Jackson stated that: (1) she felt bound to follow the recommendation of the CGAC; (2) the CGAC: (a) spent a great amount of time dealing with the problem; and (b) has representatives from all segments of the gaming industry including: (i) organizations; (ii) facilities; and (iii) the KCGA.

Senator Bradley stated that: (1) the issue is whether the agency has statutory authority to enact the administrative regulation; (2) race track owners and operators have advised that they would not be able to stay in business if it wasn't for the tellers being able to bet on the races; (3) this situation is different, because of the potential for abuse; (4) he agreed with the reasoning behind this administrative regulation, and opposed any amendment of the requirement.

In response to questions from Senator Kafoglis, Ms. Jackson stated that: (1) the only prohibition against workers playing games involves the following language in 500 KAR 11:030 which states: "no individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall be permitted to purchase or play charity game tickets."; and (2) the prohibition only applies to the playing of charity game tickets and not the playing of bingo.

Chairman Crenshaw asked Mr. Rapier: (1) if the KCGA had a representative on the CGAC; and (2) if Mr. Rapier was present at the meeting of the CGAC when this administrative regulation was considered.

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Mr. Rapier responded that he: (1) was not executive director of the KCGA at the time the advisory commission met to consider the administrative regulation; (2) was not present at the meeting of the commission; and (3) did not want to undermine the authority of the CGAC.

In response to questions from Representative Crenshaw, Ms. Jackson stated that: (1) the representative of the KCGA voted in favor of prohibiting workers from playing charity game tickets; (2) the vote was unanimous; and (3) the KCGA representative made the suggestion to prohibit workers from playing charity game tickets in the first place.

500 KAR 11:040 & E. Bingo standards. Ms. Jackson stated that: (1) this administrative regulation sets standards for: (a) construction and distribution of bingo materials; and (b) rules of play; (2) a hearing on the emergency administrative regulation was held in April 1995; (3) over 100 people attended the notice of intent hearing; (4) following the notice of intent hearing the CGAC had a work session and promulgated an ordinary administrative regulation which adopted virtually all the changes suggested at the hearing; (5) of the 50 people that attended the public hearing on the ordinary administrative regulation, only 6 had comments on this administrative regulation and most of those suggested changes had already been made when the ordinary administrative regulation was filed; and (6) volunteers are now permitted to play bingo under this administrative regulation.

Mr. Rapier stated that the KCGA was very pleased with the changes.

Chairman Crenshaw stated that: (1) Ms. Jackson, the KCGA, and public at large should be commended for working out their differences regarding these administrative regulations; and (2) the subcommittee's job would be much easier if all parties worked together the way the Division of Charitable Gaming and the regulated community did in this situation.

500 KAR 11:050 & E. Raffle standards. Ms. Jackson stated that: (1) this administrative regulation addresses standards for construction, distribution and conduct of raffles in the Commonwealth of Kentucky; (2) only 2 individuals had comments relating to this administrative regulation; (3) Senator Richard Roeding did not like the fact that bulk ticket sales were prohibited, but this prohibition is statutory and not addressed by the administrative regulation; (4) another commenter wanted to alert the Division that illegal raffles were being conducted; and slot machines were being used; (5) Division representatives advised this individual of the proper procedure for reporting illegal activity; (6) the cumbersome record keeping requirements were removed from this administrative regulation as a result of comments received at the notice of intent hearing.

Representative Bruce asked how this administrative regulation affected school raffles.

Ms. Jackson responded that: (1) there are no public schools in Kentucky that are tax exempt under Section 501(c)(3) of the Internal Revenue Code and therefore no public schools can conduct charitable gaming activities; (2) public schools cannot meet the tax exempt status required by Chapter 238 because they receive tax dollars; (3) a school organization like the band boosters, or the PTA can qualify as a tax exempt organization and either apply for a charitable gaming license or notify the Division that they are exempt from Chapter 238; and (4) the subcommittee on charitable gaming is currently working on a bill to be introduced in the 1996 session of the General Assembly that would authorize schools to conduct charitable gaming activities.

Representative Bruce asked if schools are exempt from the law.

Ms. Jackson responded that: (1) currently schools cannot legally conduct raffles because they do not qualify as a charity for purposes of Chapter 238; (2) the reason they cannot receive a license from the Division is that they do not qualify as a tax exempt organization under 501(c)(3) of the Internal Revenue Code.

Representative Bruce asked what steps would be taken against a school if they conducted a raffle.

Ms. Jackson responded that: (1) A memorandum has been sent by the Department of Education to all superintendents and boards of education outlining the requirements under Chapter 238; (2) the Education Department should be applauded for their efforts to get the word out; (3) if a school or other entity in Kentucky is illegally conducting a raffle, the Division writes a cease and desist letter informing them that their activity is a violation of Kentucky law; (4) if a school continues to have raffles after a cease and desist letter has been issued further action may be warranted, including refusal to grant a license once a request has been made.

Representative Bruce stated that: (1) perhaps this administrative regulation should be found deficient; (2) then local schools would be able to do what they want.

Ms. Jackson responded that: (1) a statutory change would be necessary to allow schools to operate as charities; (2) this administrative regulation only sets out the kinds of tickets to be used when conducting a raffle and how records are to be kept; and (3) the grant of authority to conduct raffles is statutory, not regulatory.

Representative Allen asked about raffle requirements for private schools.

Ms. Jackson responded that: (1) it would depend on the tax exempt status given to the private schools by the Internal Revenue Service; (2) Catholic schools have a particular ruling from the IRS; (3) other private schools would need to look to the IRS ruling regarding that particular school.

In response to further questions from Representative Allen, Ms. Jackson stated that: (1) she is the assistant director of the division and also serves as acting director; (2) there are currently 21 employees in the Division of Charitable Gaming; (3) the current budget is in excess of 1 1/2 million dollars; and (4) the budget includes heavy start up costs.

Representative Allen stated that: (1) the agency currently has a budget of 1 1/2 million dollars; and (2) with a little work the agency can be as big as the Cabinet for Human Resources.

Mr. Rapier stated that the KCGA agrees fully with the findings of the CGAC and support this administrative regulation.

Representative Bruce noted his objection to the administrative regulation and stated that this administrative regulation will result in: (1) unnecessary bookkeeping; and (2) the addition of unnecessary staff.

Chairman Crenshaw noted that there was no motion to find the administrative regulation deficient and therefore the administrative regulation was adopted.

500 KAR 11:060 & E. Tipping prohibited. Ms. Jackson stated that: (1) this administrative regulation: (a) was promulgated by the division to address the statutory prohibition against compensation found in KRS 238.540; (b) was not amended following comments at the notice of intent public hearing based on an Attorney General's Opinion issued at Senator David Boswell's request; (2) the Attorney General's Opinion found that the administrative regulation complied with the statutory authority given by the General Assembly; (3) the CGAC after reviewing the opinion felt that the statute should be amended to clarify whether tipping should be allowed; (4) the subcommittee on charitable gaming is drafting proposed legislation to deal with the tipping issue; (5) there are some in the regulated community that favor tipping and there are others who believe tipping should be prohibited; (6) those who favor tipping are very vocal, but the Division is bound to follow the opinion of the Attorney General until the statute is amended.

Chairman Crenshaw requested that anyone who wanted to speak against this administrative regulation to please come to the microphone.

Mr. Rapier stated that: (1) the Division's hands are tied given the Attorney General's Opinion; (2) the KCGA is pleased with the progress made on drafting clarifying legislation; and (3) individual patrons should be allowed to tip volunteers.

Chairman Crenshaw stated that all parties should be commended

for their reasonableness and thoroughness in successfully reaching a consensus in this process.

Ms. Jackson responded that: (1) the subcommittee should be commended for allowing these administrative regulations to be deferred until a consensus could be reached; (2) the industry has also been a big help in this process; and (3) the agency wished to thank the regulated community for their patience in this matter.

Office of the Secretary

501 KAR 6:170. Green River Correctional Complex. In response to Representative Allen's question at the September Subcommittee meeting regarding the Department's policy on smoking, Mr. Damron stated that smoking is permitted in designated areas by employees and inmates.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:070. Motor vehicle dimension limits. In response to a question by Representative Bruce, Sandy Pullen, Transportation Cabinet, stated that: (1) the list of roads over which wider vehicles may be operated had been rearranged and renumbered because of the changes required by the AA highway; (2) the vehicle dimensions were not changed; (3) no road had been removed from the system that does not have a new access, such as a new bypass; (4) the existing dimensions are safe and relate primarily to the width of semi-trailers, especially vehicles that are the increased 102 inch wide trailers that are wider than certain lanes; and (5) farm machinery is: (a) not governed or affected by this administrative regulation; (b) governed by the administrative regulation relating to over-dimensional permit; and (c) while farmers are not exempt from the safety provisions of a permit, they are exempt from obtaining a permit.

603 KAR 5:071. Bus dimension limits.

Department of Education: Office of District Support: School Administration and Finance

702 KAR 3:300. Approval for school district lease agreements.

School Terms, Attendance and Operation

702 KAR 7:010. Terms and months.

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.

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 1:040 & E. Posting notice to employees.

787 KAR 1:050 & E. Social Security number required of employees.

787 KAR 1:080 & E. Labor dispute or strike; notification.

787 KAR 1:110 & E. Appeals.

787 KAR 1:120 & E. Fees for representing claimant.

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 1:200 & 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 1:250 & E. Release of notice of levy.

787 KAR 1:260 & E. Voluntary election of coverage.

787 KAR 1:280 & E. Limitation on pension deductions.

787 KAR 1:300 & E. Successorship.

787 KAR 1:310 & E. Claimant profiling.

Employment Services

787 KAR 2:010 & E. Veterans' benefits.

Department of Alcoholic Beverage Control: Licensing

804 KAR 4:320E. Special temporary distilled spirits and wine auction license. Subcommittee staff stated that: (1) Section 3(b) of this administrative regulation failed to comply with KRS 244.050 and 244.240(3); and (2) these statutory provisions prohibit the gift or donation of distilled spirits and wines by licensees. Gordon Goad, the Board's general counsel, agreed to amend Section 3(b) of the administrative regulation when the ordinary administrative regulation is filed by the agency, to: (a) clarify that a special temporary distilled spirits and wine auction license shall authorize the purchase of spirits and wine; and (b) specify that a charitable or nonprofit organization may accept distilled spirits and wines only by gift or donation from an individual.

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:460E. Summer Cooling Program.

Department for Medicaid Services

907 KAR 1:585 & E. Estate recovery. In response to Representative Jimmie Lee's questions concerning the recovery program, Ked Fitzpatrick, Department of Medicaid Services representative, stated that: (1) since the filing of this administrative regulation as an emergency administrative regulation, the Cabinet for Human Resources has made efforts to recover numerous Medicaid overpayments from estates; (2) approximately 766 estates have been identified in which the Cabinet may have a potential claim for recovery; and (3) to date: (a) these potential claims total over 3 million dollars; and (b) \$450 dollars have been recovered from one estate in which the estate representative reported overpayments to the Cabinet.

The following administrative regulation was withdrawn by the promulgating agency:

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:130 & E. Determination defined. This administrative regulation was withdrawn because the agency determined that the definition for the word "determination", as used in the statute, has a commonly understood meaning and does not need to be included in the administrative regulation.

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Department of Personnel: Classified

101 KAR 2:100E. Leave administrative regulations.

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Unclassified

101 KAR 3:010E. Leave administrative regulations.

Revenue Cabinet: Income Tax; Corporation

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

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.

Tourism Cabinet: Department of Travel Development

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

Justice Cabinet: Department of Corrections: Class D Felons

501 KAR 2:060. Procedures for housing of Class D felons. In addition to amendments made in response to legislative subcommittee staff reviews, Jack Damron, Department attorney, proposed agency initiated amendments that were not related to the issues raised by an agency public hearing or legislative subcommittee staff reviews. In response to questions by Subcommittee staff, he: (1) stated that the agency initiated amendments were included with those resulting from legislative subcommittee staff reviews; and (2) was informed that agency initiated amendments: (a) should be presented separately, because KRS Chapter 13A provided that amendments that do not relate to issues raised by the public hearing or legislative subcommittee staff reviews would have to be proposed by a Subcommittee member; and (b) the portions of the proposed amendment relating to a public hearing or legislative subcommittee staff reviews should be identified and presented first.

It appeared that the amendments to Sections 6 and 8 were agency initiated amendments that were not related to the issues raised by an agency public hearing or legislative subcommittee staff reviews. Excluding amendments to Sections 6 and 8, the Subcommittee approved to this administrative regulation to: (1) conform to the drafting requirements of KRS 13A.222, and the format requirements of KRS 13A.220(4); and (2) insert a cross reference to 501 KAR 6:020, in which CPP 25.6, related to this administrative regulation, was incorporated by reference.

Mr. Tanner, Kentucky Magistrates and Commissioners' Association, stated that his opposition to the administrative regulation was not affected by the amendments to it. Mr. Damron stated that the agency initiated amendments to Sections 6 and 8: (1) dealt with inmates that were placed in jails, rather than prisons; (2) addressed whether they were to be considered minimum custody; (3) added "community custody" as a different classification; (4) limited the number of furloughs an inmate may take by: (a) requiring that an inmate serve at least 6 months of his sentence before application for a furlough; and (b) establishing the number of furloughs to 1 per quarter; (5) provide that the documented opposition of the sentencing judge to an inmate's application for furlough would prohibit the inmate from being permitted to go on furlough in the jurisdiction in which sentence was imposed; (6) preclude additional furloughs while the sentence was served, if violations while on furlough occurred, unless the Deputy Commissioner for Community Services approved; and (7) deleted the specific amount to be paid for per diem jail medical expenses since it was established by the General Assembly by statute.

Mr. Tanner stated that he and the Association were opposed to this administrative regulation because: (1) Section 4(2) provides that a Class D felon shall not be released by a jailer to other counties, another state, or federal authority unless approved, after notice to, by the Director of Local Facilities; (2) contrary to Section 4(2), current law permits negotiation among jailers to move the felon to another county without the permission of the Director of Local Facilities; and

(3) the General Assembly enacted a statute that all Class D felons would be held in county jails, and the requirement of Section 4(2) that jailers receive permission to move felons could hamper jail management by jailers, especially in counties with a large prison population and with a large number of beds available.

In response to questions by Representative Lee, Mr. Robert Powell, Director of Local Facilities, stated that: (1) up to now, if a jail wants to have an inmate transferred to another jail, it could simply transfer him; (2) the Department believes that since it is responsible for the monthly reimbursement of a county for Class D felons housed in the county: (a) it is difficult to keep records of the 1,000 Class D felons in 44 counties that could be transferred; and (b) transfers have occurred without the Department's knowledge, which resulted in the Department made double payments for a single transfer; (3) the Department has lost jurisdiction over a felon and his sentence, for whom there was a hold or warrant from another state, because it was not informed of his transfer to another county; (4) if enacted, this administration would: (a) establish guidelines requiring that the Department be notified where the inmate is going and the date of his transfer; (b) not authorize the Department to designate the county to which the inmate is sent; and (c) enable the Department to make necessary notifications, such as a notification to a jailer of when a Class D felon is eligible for parole, which would be impossible or would be delayed, if the Department is unaware the Class D felon has been transferred from one county to another.

Mr. Tanner stated that: (1) advance notice of a transfer should be given to the Department; (2) jailers do not object to giving advance notice of a transfer; (3) the objection is to requiring the approval of the Department, which: (a) is not necessary; (b) would hamstring jailers in the operation of jails; and (c) exceeds the authority granted by applicable statutes to jailers and the Department. In response to a question by Representative Lee, Mr. Powell stated that, even if there is an outstanding warrant, the Department would: (1) not oppose the transfer, so long as it was notified; and (2) oppose a transfer only if the jail to which the felon was to be transferred: (a) was not qualified; or (b) had determined that it would not hold Class D felons.

Representative Lee: (1) stated that if a jailer informed him or a member of the Subcommittee that his county arbitrarily was not permitted to transfer Class D felons to other facilities, the Subcommittee would reconsider this administrative regulation; and (2) requested that he be informed if transfer was arbitrarily denied. Mr. Tanner stated that it would have been better if the Department had stated in this administrative regulation that transfers: (1) would be permitted; (2) prior notification was required for informational purposes; and (3) would be prohibited only for the reasons just stated by Department personnel.

In response to a question by Representative Bruce as to whether he felt this administrative regulation was deficient or should be further amended, Mr. Tanner stated that the provision relating to Department approval of a transfer should be amended to meet the objections raised by counties and jailers. Representative Bruce stated that: (1) the Department, if it wished, could amend this administrative regulation at this Subcommittee meeting to resolve the issues raised; and (2) if it failed to, would move to find this administrative regulation deficient.

In response to Chairman Crenshaw's request that the Department respond to the suggestion that the Department amend this administrative regulation to resolve the issues raised, Mr. Damron stated that the Department: (1) wanted to amend this administrative regulation as it proposed; and (2) had and needed the authority to execute its legal and financial responsibility for Class D felons by controlling where they are housed or transferred. In response to Chairman Crenshaw's request, Subcommittee staff stated that if the Department had guidelines or conditions for the approval or denial of transfers, KRS Chapter 13A required them to be set out in an administrative regulation. Representative Lee stated that: (1) he would not have a problem with this administrative regulation if it contained the condi-

tions or guidelines for approval that the Department stated it would follow; and (2) this administrative regulation could be amended at this Subcommittee meeting to include the conditions or guidelines. Mr. Powell stated that there could be guidelines or conditions in addition to those the Department mentioned. Mr. Powell agreed with Representative Lee's recommendation that this administrative regulation could be deferred, until Department personnel and Mr. Tanner, with Subcommittee staff assistance if needed, could draft an amendment that would satisfy all parties and comply with statutory authority.

Representative Bruce stated that: (1) at least some Department personnel had agreed with Mr. Tanner's comments; (2) it appeared a compromise that would satisfy all parties and conform to applicable statutes could be reached; and (3) unless an agreement to amend was reached, the administrative regulation would be found deficient. Mr. Danner stated that he: (1) agreed with Mr. Powell's comments; and (2) would agree to defer to the November Subcommittee meeting in order to include the specific guidelines and conditions governing approval of transfers of Class D felons.

Senator Kafoglis stated that the delay inherent in approval would be an important matter to jailers, and asked how long a delay approval would cause. Mr. Danner stated that the delay would not exceed a few days. Senator Kafoglis stated that an amendment to this administrative regulation should include a reasonable time period during which the Department could obtain the facts it needed to make its determination on the transfer.

Chairman Crenshaw stated that the Department wished to withdraw the amendments it had proposed to the Subcommittee and defer until the November Subcommittee meeting. The Subcommittee reconsidered its motion to amend this administrative regulation.

Department of State Police: Candidate Selection

502 KAR 45:145E. Merit Pay Program.

Workforce Development Cabinet: Department for Adult Education and Literacy: Adult Education and Literacy

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: 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.

Cabinet for Human Resources: Department for Medicaid Services

907 KAR 1:060E. Medical transportation.

907 KAR 1:061E. Payments for transportation services.

Kentucky Health Policy Board: Administration

909 KAR 1:055 & E. Certificate of need.

909 KAR 1:100E. Provider network certification.

The Subcommittee adjourned at 2:15 p.m. until November 6, 1995 at 10 a.m. in Room 149 of the State Capitol Annex.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY Meeting of September 19, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Labor and Industry during its meeting of September 19, 1995, having been referred to the Committee on September 13, 1995, pursuant to KRS 13A.290(6): 803 KAR 25:190.

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: 803 KAR 25:190.

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.

SPECIAL SUBCOMMITTEE ON ENERGY Meeting of September 25, 1995

The following administrative regulation was available for consideration by the Special Subcommittee on Energy during its meeting of September 25, 1995, having been referred to the Committee on September 6, 1995, pursuant to KRS 13A.290(6): 807 KAR 5:013.

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 25, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of September 20, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of September 20, 1995, having been referred to the Committee on September 13, 1995, pursuant to KRS 13A.290(6):

201 KAR 20:057, 201 KAR 20:162, 201 KAR 20:410, 902 KAR 14:070 & E, 904 KAR 2:006, 904 KAR 2:060, 904 KAR 3:020, 904 KAR 3:050 & E, 904 KAR 3:060 & E, 904 KAR 3:070, 907 KAR 1:025, 909 KAR 1:021E, 909 KAR 1:055E, 909 KAR 1:080 & E, 909 KAR 1:090 & 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 September 20, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION Meeting of October 3, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of October 3, 1995, having been referred to the Committee on , pursuant to KRS 13A.290(6):

600 KAR 5:010 & E - Transportation of Non Public School Students. (See related Civil Action No. 95-CI-647, attached)

601 KAR 9:074 - Kentucky highway use license, records, and taxes.

601 KAR 12:070 - Driving Privilege Withdrawal For Child Support Non-Payment.

603 KAR 5:072 - Mandatory annual bus inspection.

603 KAR 5:110 - Permits for moving overdimensional manufactured homes and boats.

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.

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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 11 & 12 meetings, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Meeting of September 28, 1995

The following administrative regulation was available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of September 28, 1995, having been referred to the Committee on September 13, 1995, pursuant to KRS 13A.290(6): 200 KAR 15:010.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None.

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the September 28, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of October 13, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of October 13, 1995, having been referred to the Committee on September 11, 1995 and October 2, 1995, pursuant to KRS 13A.290(6):

201 KAR 11:400
500 KAR 11:030 & E
500 KAR 11:040 & E
500 KAR 11:050 & E
500 KAR 11:060 & E
804 KAR 4:320E

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 October 13, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Meeting of October 11, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of October 11, 1995, having been referred to the Committee on October 5, 1995, pursuant to KRS 13A.290(6):

Department of Fish and Wildlife Resources

301 KAR 1:015
301 KAR 1:085
301 KAR 1:201

Purchase of Agricultural Conservation Easement Corporation

302 KAR 100:010
302 KAR 100:020

Department of Agriculture

302 KAR 20:076 & E
302 KAR 20:115 E

Department for Environmental Protection

401 KAR 100:050

Division for Air Quality

401 KAR 50:065

Kentucky Emergency Response Commission

106 KAR 1:091
106 KAR 1:131

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): 401 KAR 100:050.

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.

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Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 11, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

Administrative regulation 401 KAR 100:050 is deficient because there is no statutory authority; the statute sets forth a comprehensive scheme of regulation; and the administrative regulation is too complex to be easily understood.

ADMINISTRATIVE REGISTER - E1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E2

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 E10

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 E15

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 - E2

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
Replaced		10-13-95
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
Replaced		10-11-95
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
Replaced		10-13-95
500 KAR 11:040E	2434	3-15-95
Replaced		10-13-95
500 KAR 11:050E	2436	2-28-95
Replaced		10-13-95
500 KAR 11:060E	2437	2-28-95
Replaced		10-13-95
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
Replaced		10-3-95
902 KAR 14:070E	2442	3-1-95
Expired (170 days following publication)		9-18-95
902 KAR 14:080E	2444	3-1-95
902 KAR 14:090E	2450	3-1-95
904 KAR 3:050E	2454	2-17-95
Expired (170 days following publication)		9-18-95
904 KAR 3:060E	2458	2-17-95
Expired (170 days following publication)		9-18-95
905 KAR 7:250E	2461	2-17-95
907 KAR 1:013E	2974	5-12-95
Withdrawn		9-28-95
907 KAR 1:585E	2665	3-21-95
909 KAR 1:080E	2667	4-14-95
Replaced		9-20-95
909 KAR 1:090E	2980	5-2-95
Replaced		9-20-95

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
31 KAR 5:020E	882	10-12-95
32 KAR 1:160E	694	8-30-95
32 KAR 1:170E	883	10-10-95
101 KAR 2:100E	217	7-14-95

101 KAR 3:010E	223	7-14-95
200 KAR 22:060E	20	6-15-95
Replaced	415	10-13-95
200 KAR 22:090E	884	10-13-95
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

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502 KAR 45:045E	707	8-30-95	907 KAR 1:015E	266	6-30-95
502 KAR 45:055E	708	8-30-95	Withdrawn		8-10-95
502 KAR 45:065E	709	8-30-95	907 KAR 1:060E	267	6-30-95
502 KAR 45:075E	710	8-30-95	907 KAR 1:061E	269	6-30-95
502 KAR 45:085E	711	8-30-95	907 KAR 1:140E	895	9-27-95
502 KAR 45:145E	570	8-1-95	909 KAR 1:021E	22	6-14-95
502 KAR 45:150E	712	8-30-95	909 KAR 1:055E	23	6-14-95
702 KAR 3:245E	571	8-15-95	909 KAR 1:100E	578	8-15-95
702 KAR 3:246E	573	8-15-95			
780 KAR 2:140E	227	7-5-94	ORDINARY ADMINISTRATIVE REGULATIONS:		
Replaced	730	10-5-95	9 KAR 1:010		
787 KAR 1:010E	229	6-22-95	As Amended	273	
787 KAR 1:020E	230	6-22-95	As Amended	583	7-26-95
787 KAR 1:030E	230	6-22-95	9 KAR 1:015		
787 KAR 1:040E	230	6-22-95	As Amended	25	7-6-95
787 KAR 1:050E	231	6-22-95	9 KAR 1:020		
787 KAR 1:060E	231	6-22-95	Repealed	214	7-11-95
787 KAR 1:070E	232	6-22-95	9 KAR 1:030		
787 KAR 1:080E	232	6-22-95	As Amended	26	7-6-95
787 KAR 1:090E	233	6-22-95	9 KAR 1:035		
787 KAR 1:100E	234	6-22-95	As Amended	30	7-6-95
787 KAR 1:110E	234	6-22-95	9 KAR 1:040		
787 KAR 1:120E	237	6-22-95	As Amended	273	
787 KAR 1:130E	237	6-22-95	As Amended	583	7-26-95
Expired (ordinary withdrawn)		6-22-95	11 KAR 4:040		
787 KAR 1:140E	237	6-22-95	Amended	97	
787 KAR 1:150E	238	6-22-95	As Amended	584	9-7-95
787 KAR 1:160E	239	6-22-95	11 KAR 12:060		
787 KAR 1:170E	239	6-22-95	As Amended	30	7-6-95
787 KAR 1:180E	240	6-22-95	11 KAR 12:070		
787 KAR 1:190E	241	6-22-95	As Amended	31	7-6-95
787 KAR 1:200E	241	6-22-95	15 KAR 1:040	125	
787 KAR 1:210E	242	6-22-95	As Amended	587	9-7-95
787 KAR 1:220E	242	6-22-95	31 KAR 4:100		
787 KAR 1:230E	243	6-22-95	As Amended	274	7-26-95
787 KAR 1:240E	243	6-22-95	31 KAR 4:110		
787 KAR 1:250E	244	6-22-95	As Amended	274	7-26-95
787 KAR 1:260E	244	6-22-95	32 KAR 2:210	814	
787 KAR 1:270E	245	6-22-95	103 KAR 16:190	127	
787 KAR 1:280E	245	6-22-95	Amended	761	
787 KAR 1:290E	245	6-22-95	Withdrawn		10-18-95
787 KAR 1:300E	246	6-22-95	105 KAR 1:210		
787 KAR 1:310E	246	6-22-95	Amended	775	
787 KAR 2:010E	247	6-22-95	105 KAR 1:215		
787 KAR 2:020E	248	6-22-95	Amended	777	
787 KAR 2:030E	248	6-22-95	106 KAR 1:091		
788 KAR 2:010E	249	6-22-95	Amended	606	
803 KAR 2:320E	252	6-30-95	As Amended	898	10-11-95
803 KAR 2:403E	255	6-30-95	106 KAR 1:131		
803 KAR 2:425E	257	6-30-95	Amended	609	
803 KAR 2:500E	259	6-30-95	As Amended	900	10-11-95
804 KAR 4:320E	575	7-25-95	200 KAR 2:006		
815 KAR 8:040E	21	6-6-95	Amended	779	
903 KAR 5:001E	713	8-28-95	200 KAR 15:010		
904 KAR 2:460E	576	8-7-95	Amended	101	
907 KAR 1:009E	261	6-30-95	As Amended	715	9-28-95
Withdrawn		9-19-95	200 KAR 17:050		
Resubmitted	885	9-19-95	Amended	104	
907 KAR 1:010E	262	6-30-95	As Amended	589	8-24-95
Withdrawn		9-19-95	200 KAR 19:010		
Resubmitted	886	9-19-95	Recodified as 803 KAR 30:020		7-24-95
907 KAR 1:013E	887	9-28-95	200 KAR 20:010		
907 KAR 1:014E	264	6-30-95	As Amended	32	7-6-95
Withdrawn		8-10-95			

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As Amended	33	7-6-95	As Amended	36	6-14-95
200 KAR 22:030	412	10-13-95	302 KAR 100:010	423	10-11-95
200 KAR 22:040	413	10-13-95	302 KAR 100:020	424	10-11-95
200 KAR 22:050	414	10-13-95	307 KAR 1:030	133	
200 KAR 22:060	415	10-13-95	As Amended	591	
200 KAR 22:070	417	10-13-95	As Amended	719	8-17-95
200 KAR 22:080	815		307 KAR 2:010		
201 KAR 1:300			As Amended	39	7-6-95
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201 KAR 7:040			As Amended	40	7-6-95
Amended	935		307 KAR 4:010	135	
201 KAR 8:220			As Amended	593	
Amended	107	8-16-95	As Amended	720	8-17-95
201 KAR 8:277			401 KAR 5:030		
Amended	108	8-16-95	Amended	89	
201 KAR 11:400			As Amended	280	7-12-95
As Amended	717		401 KAR 42:005	427	
Reprint	852	10-13-95	Amended	918	
201 KAR 12:082			401 KAR 42:011		
Amended	613		Amended	315	
201 KAR 16:050			401 KAR 42:020		
Amended	936		Amended	318	
201 KAR 20:057			Amended	920	
Amended	305	9-20-95	401 KAR 42:040		
201 KAR 20:162			Amended	321	
Amended	306	9-20-95	Amended	921	
201 KAR 20:240			401 KAR 42:060		
Amended	109		Amended	323	
Withdrawn		8-16-95	Amended	921	
201 KAR 20:410	418	9-20-95	401 KAR 42:070		
201 KAR 22:070			Amended	327	
Amended	615		Amended	922	
201 KAR 30:050			401 KAR 42:071	432	
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201 KAR 32:020	420		401 KAR 42:200		
As Amended	903		Amended	337	
201 KAR 32:030	421		401 KAR 50:031	817	
As Amended	904		401 KAR 50:065	434	10-11-95
201 KAR 33:010	999		401 KAR 59:430		
201 KAR 33:020	999		Recodified as 401 KAR 60:042		10-18-95
201 KAR 33:030	1001		401 KAR 59:435		
201 KAR 33:040	1003		Recodified as 401 KAR 60:043		10-18-95
300 KAR 1:010	635		401 KAR 60:042		
301 KAR 1:015			Recodified from 401 KAR 59:430		10-18-95
Amended	308		401 KAR 60:043		
As Amended	718	10-11-95	Recodified from 401 KAR 59:435		10-18-95
301 KAR 1:085			401 KAR 100:010		
Amended	309	10-11-95	Amended	937	
301 KAR 1:201			401 KAR 100:050	137	
Amended	312	10-11-95	Amended	598	10-11-95
301 KAR 2:044			416 KAR 1:010	142	8-24-95
Repealed	695	8-23-95	418 KAR 1:010		
301 KAR 6:050	816		Amended	92	7-12-95
301 KAR 10:010			418 KAR 1:020		
Repealed	92	7-12-95	Amended	92	7-12-95
302 KAR 15:010			418 KAR 1:030		
As Amended	33	6-14-95	Amended	93	7-12-95
302 KAR 20:076	422	10-11-95			

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418 KAR 1:040			502 KAR 45:075		
Amended	94	7-12-95	Amended	961	
418 KAR 1:070			502 KAR 45:085		
Amended	96	7-12-95	Amended	962	
500 KAR 11:001	146	9-7-95	502 KAR 45:145	1004	
500 KAR 11:030	436	10-13-95	502 KAR 45:150	1005	
500 KAR 11:040	439	10-13-95	600 KAR 1:120	821	
500 KAR 11:050	441	10-13-95	600 KAR 3:010		
500 KAR 11:060	442	10-13-95	Amended	963	
500 KAR 11:070	147	9-7-95	600 KAR 5:010		
500 KAR 11:080	148	9-7-95	Amended	302	10-3-95
500 KAR 11:090	149	9-7-95	601 KAR 1:025		
500 KAR 11:100	150	9-7-95	Amended	981	
501 KAR 2:020			601 KAR 9:074		
Amended	340		Amended	345	10-3-95
As Amended	905		601 KAR 9:220	824	
501 KAR 2:040			601 KAR 12:070	444	10-3-95
Amended	341		603 KAR 4:035		
As Amended	905		Amended	984	
501 KAR 2:050			603 KAR 5:070		
Amended	342		Amended	620	
As Amended	905		603 KAR 5:071		
501 KAR 2:060			Amended	624	
Amended	343		603 KAR 5:072		
501 KAR 6:020			Amended	348	10-3-95
Amended	616		603 KAR 5:075		
Amended	783		Amended	786	
501 KAR 6:030			603 KAR 5:110		
Amended	943		Amended	350	10-3-95
501 KAR 6:040			603 KAR 5:115		
Amended	945		Amended	789	
501 KAR 6:050			603 KAR 5:301		
Amended	785		Amended	791	
501 KAR 6:080			701 KAR 5:110		
Amended	344	10-13-95	Amended	989	
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501 KAR 6:110			702 KAR 3:245		
Amended	948		Amended	990	
501 KAR 6:120			702 KAR 3:246	1005	
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Amended	950		Amended	925	
501 KAR 6:130			702 KAR 3:300	638	
Amended	619		702 KAR 7:010		
Amended	952		Amended	626	
501 KAR 6:140			702 KAR 7:050		
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501 KAR 6:170	443		702 KAR 7:080		
Amended	953		Repealed	151	9-7-95
502 KAR 45:005			702 KAR 7:081	151	9-7-95
Amended	954		702 KAR 7:090		
502 KAR 45:015			Repealed	152	9-7-95
Amended	955		702 KAR 7:091	152	9-7-95
502 KAR 45:025			704 KAR 3:470	152	9-7-95
Amended	956		704 KAR 20:055		
502 KAR 45:035			Repealed	153	9-7-95
Amended	957		704 KAR 20:056	153	9-7-95
502 KAR 45:045			704 KAR 20:305		
Amended	958		As Amended	283	8-3-95
502 KAR 45:055			704 KAR 20:510		
Amended	959		Amended	992	
502 KAR 45:065			735 KAR 1:010		
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750 KAR 1:010			As Amended	734	10-5-95
Amended	627		780 KAR 5:020		
As Amended	906		Amended	373	
780 KAR 2:010			As Amended	734	10-5-95
Amended	353		780 KAR 5:030		
As Amended	722	10-5-95	Amended	374	
780 KAR 2:020			As Amended	735	10-5-95
Amended	354		780 KAR 5:040		
As Amended	722	10-5-95	Amended	375	
780 KAR 2:021	445	10-5-95	As Amended	735	10-5-95
780 KAR 2:030			780 KAR 5:050		
Amended	355		Amended	375	
As Amended	723	10-5-95	As Amended	735	10-5-95
780 KAR 2:035	446		780 KAR 7:010		
As Amended	724	10-5-95	Amended	376	
780 KAR 2:040			As Amended	735	10-5-95
Amended	357		780 KAR 7:020		
As Amended	724	10-5-95	Amended	378	
780 KAR 2:045			As Amended	737	10-5-95
Repealed	445	10-5-95	780 KAR 7:030		
780 KAR 2:050			Amended	379	
Repealed	445	10-5-95	As Amended	738	10-5-95
780 KAR 2:060			780 KAR 7:032	450	
Amended	358		As Amended	738	10-5-95
As Amended	725	10-5-95	780 KAR 7:035		
780 KAR 2:070			Repealed	739	10-5-95
Repealed	445	10-5-95	780 KAR 7:036	451	
780 KAR 2:080			As Amended	739	10-5-95
Repealed	445	10-5-95	780 KAR 7:040		
780 KAR 2:090			Amended	380	
Amended	359		As Amended	739	10-5-95
As Amended	726	10-5-95	780 KAR 7:050		
780 KAR 2:100			Repealed	739	10-5-95
Amended	361		780 KAR 7:060		
As Amended	727	10-5-95	Amended	381	
780 KAR 2:110			As Amended	739	10-5-95
Amended	363	10-5-95	780 KAR 7:070		
780 KAR 2:120			Amended	382	
Amended	364		As Amended	740	10-5-95
As Amended	728	10-5-95	780 KAR 8:010		
780 KAR 2:130			Repealed	740	10-5-95
Amended	365		780 KAR 8:011	452	
As Amended	728	10-5-95	As Amended	740	10-5-95
780 KAR 2:140			780 KAR 9:131	825	
Amended	367		781 KAR 1:040		
As Amended	730	10-5-95	Amended	111	10-5-95
780 KAR 2:150			785 KAR 1:010	639	
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780 KAR 4:010			785 KAR 1:030	642	
Amended	369		785 KAR 1:040	643	
As Amended	731	10-5-95	785 KAR 1:050	646	
780 KAR 4:020			785 KAR 1:060	648	
Amended	371		785 KAR 1:070	650	
As Amended	732	10-5-95	785 KAR 1:080	651	
780 KAR 4:030	447		785 KAR 1:090	652	
As Amended	733	10-5-95	785 KAR 1:100	653	
780 KAR 4:040	448		785 KAR 1:110	654	
As Amended	733	10-5-95	787 KAR 1:010	452	
780 KAR 4:050	448		787 KAR 1:020	454	
As Amended	734	10-5-95	787 KAR 1:030	455	
780 KAR 4:060	449		As Amended	908	
As Amended	734	10-5-95	787 KAR 1:040	456	

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787 KAR 1:060	459		As Amended	286	8-10-95
As Amended	908		806 KAR 47:010	154	9-7-95
787 KAR 1:070	460		806 KAR 47:020	155	9-7-95
As Amended	909		806 KAR 47:030	157	9-7-95
787 KAR 1:080	461		807 KAR 5:013	503	9-25-95
787 KAR 1:090	463		807 KAR 5:058		
As Amended	909		As Amended	287	7-21-95
787 KAR 1:100	465		807 KAR 5:076		
As Amended	910		Amended	994	
787 KAR 1:110	466		815 KAR 7:100		
787 KAR 1:120	470		Amended	113	9-7-95
787 KAR 1:130	471		815 KAR 8:010		
Withdrawn		10-2-95	Amended	792	
787 KAR 1:140	472		815 KAR 8:020		
787 KAR 1:150	473		Amended	794	
787 KAR 1:160	475		815 KAR 8:040	505	
787 KAR 1:170	476		As Amended	915	
787 KAR 1:180	478		815 KAR 10:040		
787 KAR 1:190	479		Repealed	506	10-13-95
As Amended	911		815 KAR 10:050	506	10-13-95
787 KAR 1:200	481		815 KAR 20:020		
787 KAR 1:210	482		Amended	796	
787 KAR 1:220	483		815 KAR 20:078		
787 KAR 1:230	484		Amended	799	
787 KAR 1:240	486		815 KAR 20:110		
As Amended	911		Amended	116	9-7-95
787 KAR 1:250	487		815 KAR 20:120		
787 KAR 1:260	488		Amended	800	
787 KAR 1:270	490		815 KAR 35:015		
As Amended	911		Amended	117	
787 KAR 1:280	491		As Amended	594	9-7-95
787 KAR 1:290	492		815 KAR 35:030		
As Amended	912		Amended	630	
787 KAR 1:300	493		As Amended	916	
787 KAR 1:310	495		902 KAR 14:070	507	9-20-95
787 KAR 2:010	496		902 KAR 14:080	510	
787 KAR 2:020	498		Amended	767	
As Amended	912		902 KAR 14:090	517	
787 KAR 2:030	499		902 KAR 20:004		
As Amended	912		Repealed	81	6-21-95
788 KAR 2:010	501		902 KAR 20:126		
803 KAR 25:020			Repealed	87	6-21-95
Repealed	52	6-15-95	902 KAR 20:270		
803 KAR 25:021			Amended	383	
As Amended	52	6-15-95	Amended	927	
803 KAR 25:025			902 KAR 55:095		
Repealed	54	6-15-95	As Amended	291	7-26-95
803 KAR 25:026			902 KAR 115:020		
As Amended	54	6-15-95	As Amended	292	7-26-95
803 KAR 25:150	656		903 KAR 1:010		
As Amended	913		Repealed	713	8-28-95
803 KAR 25:170	658		903 KAR 5:010		
Amended	926		Repealed	713	8-28-95
803 KAR 25:190			903 KAR 5:020		
Amended	303		Repealed	713	8-28-95
As Amended	740	9-19-95	903 KAR 5:030		
803 KAR 30:010	826		Repealed	713	8-28-95
803 KAR 30:020			903 KAR 5:050		
Recodified from 200 KAR 19:010		7-24-95	Repealed	713	8-28-95
804 KAR 4:320	1008		903 KAR 5:060		
806 KAR 9:220			Repealed	713	8-28-95
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Reprinted	675	7-6-95	Repealed	713	8-28-95

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903 KAR 5:090			As Amended	741	9-20-95
Repealed	713	8-28-95	904 KAR 2:046		
903 KAR 5:100			Amended	121	8-16-95
Repealed	713	8-28-95	904 KAR 2:050		
903 KAR 5:110			Amended	122	8-16-95
Repealed	713	8-28-95	904 KAR 2:060		
903 KAR 5:130			Amended	393	9-20-95
Repealed	713	8-28-95	904 KAR 2:118		
903 KAR 5:140			Recodified from 903 KAR 6:020		8-28-95
Repealed	713	8-28-95	904 KAR 2:400		
903 KAR 5:150			As Amended	60	6-21-95
Repealed	713	8-28-95	904 KAR 2:410		
903 KAR 5:160			As Amended	61	6-21-95
Repealed	713	8-28-95	904 KAR 3:010		
903 KAR 5:170			Amended	809	
Repealed	713	8-28-95	904 KAR 3:020		
903 KAR 5:180			Amended	395	9-20-95
Repealed	713	8-28-95	904 KAR 3:050		
903 KAR 5:220			Amended	399	9-20-95
Repealed	713	8-28-95	904 KAR 3:060		
903 KAR 5:230			Amended	403	
Repealed	713	8-28-95	As Amended	746	9-20-95
903 KAR 5:250			904 KAR 3:070		
Repealed	713	8-28-95	Amended	407	9-20-95
903 KAR 5:270			904 KAR 3:100	660	
Repealed	713	8-28-95	905 KAR 2:140		
903 KAR 5:290			As Amended	65	6-21-95
Repealed	713	8-28-95	905 KAR 7:250	520	
903 KAR 5:300			Amended	931	
Repealed	713	8-28-95	907 KAR 1:025		
903 KAR 5:310			As Amended	749	9-20-95
Repealed	713	8-28-95	907 KAR 1:420		
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