

ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on January 8, 1996. See **tentative agenda** beginning on page 1201 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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ADMINISTRATIVE REGISTER - 1201

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - January 8, 1996, 10 a.m.
Room 131, Capitol Annex**

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

STATE BOARD OF ELECTIONS

Voting

31 KAR 5:020 (& E). Placement of voting machines.

DEPARTMENT OF PERSONNEL

Classified

101 KAR 2:100 (& E). Leave administrative regulations.

Unclassified

101 KAR 3:010 (& E). Leave administrative regulations.

FINANCE AND ADMINISTRATION CABINET

Personnel Pilot Programs

200 KAR 22:090 & E. Comprehensive Employment Manual of the Workforce Development Cabinet's Department for the Blind in 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 Registration for Professional Engineers and Land Surveyors

201 KAR 18:129. Repeal of 201 KAR 18:130, 201 KAR 18:160; 201 KAR 18:200.

Kentucky Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 33:030. Continuing education requirements for licensees and certificate holders. (Deferred from December)

INDEPENDENT ADMINISTRATIVE BODIES

Kentucky Spinal Cord and Head Injury Research Board

202 KAR 4:010E. Spinal cord and head injury research program.

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 2:221E. Waterfowl seasons and limits.

301 KAR 2:222E. Waterfowl hunting requirements.

301 KAR 2:223E. Waterfowl reporting requirements.

301 KAR 2:224E. Waterfowl hunting zones.

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

Licensing

301 KAR 5:001 (& E). Definitions for 301 KAR Chapter 5.

301 KAR 5:010 (& E). Licensing agent selection criteria.

DEPARTMENT OF AGRICULTURE

Livestock Sanitation

302 KAR 20:081. Repeal of 302 KAR 20:080.

302 KAR 20:115 (& E). Vesicular stomatitis.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Air Quality - General Administrative Procedures

401 KAR 50:031. Inherent physical limitations. (Public Hearing in October)

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:114E. Contractor certification. (Deferred from December)

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JUSTICE CABINET Department of Corrections

Office of the Secretary

501 KAR 6:020E. Corrections policies and procedures.
501 KAR 6:040. Kentucky State Penitentiary.
501 KAR 6:060. Northpoint Training Center.
501 KAR 6:090. Frankfort Career Development Center.
501 KAR 6:110. Roederer Correctional Complex.
501 KAR 6:120. Blackburn Correctional Complex.
501 KAR 6:130. Western Kentucky Correctional Complex.
501 KAR 6:140. Bell County Forestry Camp.

Department of State Police

Candidate Selection

502 KAR 45:025 (& E). Disqualification. (Deferred from December)

TRANSPORTATION CABINET Department of Highways

Right-of-way

603 KAR 4:035. Logo signs; placement along fully controlled access highways. (Public Hearing in November)

Department of Highways

Traffic

603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits.

EDUCATION, ARTS, AND HUMANITIES CABINET Office of District Support

School Administration and Finance

702 KAR 3:245 (& E). School council allocation formula: Kentucky uniform school financial accounting system. (Emergency was found deficient by ARRS 10/2/95) (Public Hearing in November)
702 KAR 3:246 (& E). School council allocation formula: KETS district administrative system chart of accounts. (Emergency was found deficient by ARRS 10/2/95) (Public Hearing in November)
702 KAR 3:280. School district Medicaid providers. (Amended After Hearing) (Deferred from November)

LABOR CABINET

Occupational Safety and Health

803 KAR 2:320 & E. Air contaminants.
803 KAR 2:403 & E. Occupational health and environmental controls.
803 KAR 2:425E. Adoption of 29 CFR Part 1926.1100-.1148. (Deferred from September) (Will not be replaced by an ordinary administrative regulation)
803 KAR 2:500 & E. Maritime employment.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals

Division of Gas and Oil

805 KAR 1:150. Content of the operations and reclamation proposal; form on which the proposal is filed.

Department of Housing, Buildings and Construction

Kentucky Building Code

815 KAR 7:100. The Kentucky Building Code.

Standards of Safety

815 KAR 10:046. Repeal of 815 KAR 10:045.

CABINET FOR HUMAN RESOURCES Department for Health Services

Local Health Departments

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.
902 KAR 8:070. Recruitment examination, and certification of eligibles for local health departments of Kentucky.
902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.
902 KAR 8:120. Leave provisions applicable to employees of local health departments.

Kentucky Birth Surveillance Registry

902 KAR 19:010. Kentucky Birth Surveillance Registry.

Department for Social Insurance

Public Assistance

904 KAR 2:016E. Standards for need and amount; AFDC.
904 KAR 2:431. Repeal of 904 KAR 2:430.

Food Stamp Program

904 KAR 3:111. Repeal of 904 KAR 3:110.

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Department for Social Services

Children's Residential Services

905 KAR 7:250 & E. Kentucky educational collaborative for state agency children. (Amended After Hearing) (Emergency Expired 10/18/95) (Deferred from November)

Department for Medicaid Services

Medicaid Services

907 KAR 1:009E. Physicians' services. (Deferred from December)
907 KAR 1:010E. Payments for physicians' services. (Deferred from December)
907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from December)
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)
907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities (AIS-MR-DD) (Repeals 907 KAR 1:425). (Deferred from December)
907 KAR 1:505E. Psychiatric residential treatment facility services. (Repeals 907 KAR 1:512)
907 KAR 1:510E. Payments for psychiatric residential treatment facility services.

Department for Mental Health and Mental Retardation

Substance Abuse

908 KAR 1:300. Chemical dependency program evaluation.

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: This administrative regulation, 806 KAR 6:080, is being reprinted because Appendix A have never been published.

806 KAR 6:080. Reserve standards for individual health insurance policies.

RELATES TO: KRS 304.6-070, 304.17-275

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-070

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.6-070 provides that the Commissioner of Insurance shall issue administrative regulations establishing minimum standards for reserves for individual health insurance policies.

Section 1. Active Life Reserves. (1) General.

(a) Active life reserves are required for all in-force policies and are in addition to any reserves required in connection with claims. For policy Types A, B, and C, described in subsection (2) of this section, the minimum reserve is determined as specified herein.

(b) It is emphasized, however, that these are minimum standards and that KRS 304.6-070 requires that higher, adequate reserves be established by the insurer in any case where experience indicates that these minimum standards do not place a sound value on the liabilities under the policy. For policy Type D, the minimum reserve should be the gross pro rata unearned premium (premium reserve).

(2) Types of individual health insurance policies.

(a) Type A - policies which are guaranteed renewable for life or to a specified age, such as sixty (60) or sixty-five (65), at guaranteed premium rates.

(b) Type B - policies which are guaranteed renewable for life or to a specified age, such as sixty (60) or sixty-five (65), but under which the insurer reserves the right to change the scale of premiums.

(c) Type C - policies in which the insurer has reserved the right to cancel or refuse for one (1) or more reasons, but has agreed implicitly or explicitly that, prior to a specified time or age, it will not cancel or decline renewal solely because of deterioration of health after issue; however, policies shall not be considered of this type if the insurer has reserved the right to refuse renewal provided the right is to be exercised at the same time for all policies in the same category, if premiums are graded so as to be substantially proportionate to the costs of insurance at the various attained ages. Policies which comply with KRS 304.17-275, on which premiums are based on issue age are of this type.

(d) Type D - all other individual policies.

(e) The above does not classify "franchise" as a type of policy. Such policies are frequently written under an agreement limiting the insurer's right to cancel or refuse renewal. Usually the right is reserved to refuse renewal of all policies in the group or other categories such as those ceasing to be members of the association, and this would place such policies in Type D in accordance with the last clause under paragraph (c) of this subsection. However, if premiums are based on the level premium principle in which any reflection of age is on the basis of age at issue, or if the renewal undertaking for the individual meets the requirements for Type A, B, or C, the franchise policy should be so classified for reserve purposes.

(f) A policy may have guarantees qualifying it as Type A, B, or C until a specified age or duration after which the guarantees, or lack of guarantees, may qualify it as Type A, B, C, or D. In such case, the policy in each period should be considered for reserve purposes according to the type to which it then belongs.

(g) Where all of the benefits of a policy, as provided by rider or

otherwise, are not of the same Type (A, B, C, or D), each benefit should be considered for reserve purposes according to the type to which it belongs.

(3) Reserve standards for policies of Type A, B, or C.

(a) Interest. The maximum interest rate for reserves should be the greater of:

1. the maximum rate permitted by law in the valuation of currently issued life insurance, or

2. the maximum rate permitted by law in the valuation of life insurance issued on the same date as the health insurance.

(b) Mortality. The mortality assumptions used for reserves should be according to a table permitted by law in the valuation of life insurance issued on the same date as the health insurance.

(c) Morbidity or other contingency. Minimum standards with respect to morbidity are those stated in Appendix A of this administrative regulation, which is subject to revision from time to time with respect to dates of issue of contracts.

(d) Negative reserves. Negative reserves on any benefit may be offset against positive reserves for other benefits in the same policy, but the mean reserve on any policy should never be taken as less than one-half (1/2) the valuation net premium.

(e) Preliminary term. The minimum reserve shall be on the basis of two (2) years preliminary term.

(f) Reserve method. Mean reserves diminished by appropriate credit for valuation net deferred premiums. In no event, however, should the aggregate reserve for all policies valued on the mean reserve basis, diminished by any credit for deferred premiums, be less than the gross pro rata unearned premiums under such policies.

(g) Alternative valuation procedures and assumptions. Provided the reserve on all policies to which the method or basis is applied is not less in the aggregate than the amount determined according to the applicable standards specified above, an insurer may use any reasonable assumptions as to the interest rate, mortality rates, or the rates of morbidity or other contingency, and may introduce an assumption as to the voluntary termination of policies. Also, subject to the preceding condition, the insurer may employ methods other than the methods stated above in determining a sound value of its liabilities under such policies, including but not limited to the following:

1. The use of midterminal policy reserves in addition to either gross or net pro rata unearned premium reserves;

2. Optional use of either the level premium, the one (1) year preliminary term, or the two (2) year preliminary term method;

3. Prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses;

4. The use of approximations such as those involving age groupings, groupings of several years of issue, average amounts of indemnity;

5. The computation of the reserve for one (1) policy benefit as a percentage of, or by other relation to, the aggregate policy reserves, exclusive of the benefit or benefits so valued;

6. The use of a composite annual claim cost for all or any combination of the benefits included in the policies valued. For statement purposes the net reserve liability may be shown as the excess of the mean reserve over the amount of net unpaid and deferred premiums, or, regardless of the underlying method of calculation, it may be divided between the gross pro rata unearned premium reserve and a balancing item for the "policy reverse."

(h) Gross unearned preliminary term premium. Where a preliminary term method, either with a one (1) year or two (2) year preliminary term period, is employed, the gross pro rata unearned premium to be used in the comparison set forth in paragraph (f) of this subsection shall bear the same relationship to the net premium for the preliminary term period on the basis of the mortality, morbidity, and interest assumptions used for subsequent valuation as the gross premium charged bears to the net valuation premium used in

subsequent years.

Section 2. Claim reserves, present value of amounts not yet due on claims (also called "Disabled Life Reserves" in the case of insurance providing loss-of-time benefits for disability due to accident or sickness).

(1) General. Reserves are required for claims on all health insurance policies, whether of Type A, C, or D, providing benefits for continuing loss, such as loss of time or hospitalization.

(2) Claim reserve standards for total disability due to accident or sickness.

(a) Interest. The maximum interest rate for reserves should be the maximum rate permitted by law in the valuation of life insurance issued on the same date as the date the claim is incurred.

(b) Morbidity. Minimum standards with respect to morbidity are those stated in Appendix A of this administrative regulation, except that for unreported claims and resisted claims and, at the option of the insurer, claims with a duration of disablement option of the insurer, claims with a duration of disablement of less than two (2) years, reserves may be based on the individual insurer's experience or other assumptions designed to place a sound value on the liabilities. Reserves based on such experience or assumptions should be verified by the development of each year's claims over a sufficient period of years along the lines of Schedule O.

(c) For policies with an elimination period, the duration of disablement should be considered as dating from the time that benefits would have begun to accrue had there been no elimination period.

(d) A new disability connected directly or indirectly with a previous disability which had a duration of at least one (1) year and terminated within six (6) months of the new disability should be considered a continuation of the previous disability.

(3) Reserve standards for all other claim reserves.

(a) Interest. The maximum interest rate for reserves should be the maximum rate permitted by law in the valuation of life insurance issued on the same date as the date the claim is incurred.

(b) Morbidity or other contingency. The reserve should be based on the individual insurer's experience or other assumptions designed to place a sound value on the liabilities. The results should be verified by the development of each year's claims over a sufficient period of years along the lines of Schedule O.

(4) Valuation procedures. The insurer may employ suitable approximations and estimates, including but not limited to groupings and averages, in computing claim reserves.

Section 3. Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 4. Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A. (11 Ky.R. 681; eff. 11-13-84.)

APPENDIX A RESERVE STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

Minimum morbidity standards for valuation of individual health insurance policies are as follows:

1. Total disability due to accident or sickness.

Active life reserves:

Policies issued on or after January 1, 1965:

The 1964 Commissioners Disability Table.

Claim reserves:

The minimum morbidity standard in effect for active life reserves on currently issued policies, as of the claim is incurred.

2. Hospital benefits, surgical benefits, and maternity benefits (either specified or expense reimbursement).

Policies issued on or after January 1, 1955, and before January 1, 1982:

The 1956 Intercompany Hospital-surgical Tables.

Policies issued on or after January 1, 1982:

The 1974 Medical Expense Tables (Table A).

3. Accidental death benefits.

Policies issued on or after January 1, 1965:

The 1959 Accidental Death Benefits Table.

4. All other benefits, including major medical, cancer expense, and other than total disability.

The insurer should adopt a standard which will produce reserves that place a sound value on its liabilities under such benefit. The use of morbidity tables reflecting the insurer's own experience, with suitable margins for stochastic variation in encouraged.

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY LEGISLATIVE ETHICS COMMISSION

Date: December 15, 1995

Kentucky Legislative Ethics Commission

- (1) **2 KAR 2:040**, Short form, employer and legislative agent updated registration statement.
- (2) The Kentucky Legislative Ethics Commission intends to promulgate an Administrative Regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 at 10 a.m. in Room 129 of the Capitol Annex, 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 January 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: Mr. Earl S. Mackey, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing." or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Legislative Ethics Commission at the address listed above.
- (7) Information relating to the proposed administration regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to updated registration statements is KRS 6.807, 6.821 and 6.827.
- (b) The administrative regulation that the Kentucky Legislative Ethics Commission intends to promulgate will not amend an existing administrative regulation. It will allow employers and legislative agents to file a shortened version of the updated registration statement, if certain prerequisites are met.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is needed to expedite and simplify filing of required registration forms.
- (d) The benefits expected from the proposed administrative regulation are: Simplification of required reporting and paperwork reduction.
- (e) The administrative regulation will be implemented as follows: Proposed alternative method for filing updated registration reports for legislative agents and employers.

GENERAL GOVERNMENT CABINET State Board of Elections

Date: December 8, 1995

General Government Cabinet

State Board of Elections

- (1) **31 KAR 4:030**, Reporting forms.
- (2) The State Board of Elections 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 January 30, 1996 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 January 30, 1996, the public hearing will be canceled.
- (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 reporting forms is KRS 117.015(1) and 117.355.
- (b) The administrative regulation that the State Board intends to promulgate will amend 31 KAR 4:030 as follows: Section 1 will be amended to incorporate newly revised forms.
- (c) The necessity and function of the proposed administrative regulation is: This amendment will incorporate the newly revised forms.

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(d) The benefits expected from the proposed administrative regulation are: The general public will be put on notice that the State Board of Elections has newly revised forms.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation is merely to incorporate by reference newly revised forms.

Date: December 8, 1995
General Government Cabinet
State Board of Elections

- (1) **31 KAR 4:040**, Special ballots cast in county clerk's office.
- (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 January 30, 1996 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 January 30, 1996, the public hearing will be canceled.
- (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 special ballots cast in the county clerk's office is KRS 117.015(1) and 117.086(5).
 - (b) The administrative regulation that the State Board intends to promulgate will amend 31 KAR 4:040 as follows:
 1. Section 1 will be amended to delete references to "special" ballots since this term is no longer recognized in the election statutes. Additionally, a provision that applied to prior law where a person could vote absentee in a clerk's office on paper absentee ballots will be deleted. Now all persons who vote absentee in the clerk's office must vote on a voting machine. KRS 117.086(2).
 2. Section 2 will be deleted since it is no longer necessary after KRS 117.235(2) was amended to prohibit electioneering during absentee voting. Additionally, the last sentence of the administrative regulation is superseded by the Voter Assistance provisions of the Voting Rights Act of 1965 as amended.
 - (c) The necessity and function of the proposed administrative regulation is: The administrative regulation, as amended, will reflect current election law.
 - (d) The benefits expected from the proposed administrative regulation are: The administrative regulation as amended will reflect current election law.
 - (e) The administrative regulation will be implemented as follows: The proposed amendment will merely make the administrative regulation consistent with current election law.

Date: December 8, 1995
General Government Cabinet
State Board of Elections

- (1) **31 KAR 4:061**, Repeal of 31 KAR 4:060.
- (2) The State Board of Elections intends to promulgate an administrative regulation to repeal 31 KAR 4:060 relating to a biennial purge of registered voters by the State Board of Elections.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, the public hearing will be canceled.
- (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 repeal of 31 KAR 4:060 is KRS 117.015(1).
 - (b) The administrative regulation that the State Board intends to promulgate will repeal 31 KAR 4:060.
 - (c) The necessity and function of the proposed administrative regulation to repeal 31 KAR 4:060 is: The administrative regulation is no longer

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necessary and, in fact, is inconsistent with KRS 116.112 which implements the requirements of the National Voter Registration Act (the "NVRA"). The NVRA contains several requirements that alter the way a state can conduct its lists maintenance procedure. The existing administrative regulation sets up a schedule to conduct a purge of ineligible voters when, in fact, purgation under the NVRA will be conducted on an ongoing basis. Also, under the NVRA, all list maintenance procedures must be completed by 90 days prior to the date of any primary or general election which is in direct conflict with the language of the administrative regulation. Additionally, the State Board of Elections will be incorporating its new purgation notice in an administrative regulation which incorporates a number of new forms which were revised pursuant to the NVRA.

(d) The benefits expected from the repeal of the existing administrative regulation: County clerks will not be confused as to the purge procedure which is now governed by the National Voter Registration Act and the state statutes implementing it.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will repeal an existing administrative regulation.

Date: December 8, 1995
General Government Cabinet
State Board of Elections

- (1) **31 KAR 4:070**, Recanvass procedures.
- (2) The State Board of Elections 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 January 30, 1996 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 January 30, 1996, the public hearing will be canceled.
- (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 recanvass procedures is KRS 117.015(1) and 117.305(2), (3).
 - (b) The administrative regulation that the State Board intends to promulgate will amend 31 KAR 4:070 to incorporate by reference a newly revised form.
 - (c) The necessity and function of the proposed administrative regulation is: The proposed amendment to the administrative regulation will incorporate by reference a newly revised form.
 - (d) The benefits expected from the proposed administrative regulation are: The general public will be put on notice that the State Board of Elections has a newly revised form.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will merely incorporate by reference a newly revised form.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary

Date: November 27, 1995
Finance and Administration Cabinet
Office of the Secretary

- (1) **200 KAR 22:100**, Comprehensive Employment Manual of the Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units, 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 January 24, 1996 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 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 January 24, 1996, the public hearing will be canceled.
- (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 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 their request may obtain a request form from the Office of the Secretary at the address following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

(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 Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units, 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 Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units, 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 Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units, who are participating in the Pilot Personnel Program, as required by KRS 18A.430(1).

(e) The administrative regulation will be implemented by the Personnel Steering Committee by notifying the Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units 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.

Date: December 8, 1995

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 22:110.** Comprehensive Employment Manual of the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations, 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 January 24, 1996, at 10 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 January 24, 1996, 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 following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

(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 Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations, 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 Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations, 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 Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations, 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 Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations 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.

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KENTUCKY STATE BOARD OF ACCOUNTANCY

Date: November 20, 1995

Kentucky State Board of Accountancy

- (1) **201 KAR 1:160**, Quality reviews.
- (2) The Kentucky State Board of Accountancy intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 29, 1996, at 9 a.m., at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 29, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.
- (b) On the request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky State Board of Accountancy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority of the promulgation of an administrative regulation relating to quality reviews is KRS 325.301(7).
 - (b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will not amend an existing administrative regulation. It will delineate the procedures for firms performing audits to obtain on-site quality reviews.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This regulation will insure that audit work is of the highest quality.
 - (d) The benefits expected from administrative regulation are: Users of audited financial statements will have greater assurance that the work has been performed in accordance with all professional standards.
 - (e) The administrative regulation will be implemented as follows: The proposed regulation will require firms to obtain quality reviews in accordance with the AICPA standards for performing and reporting on peer reviews effective April 3, 1995.

BOARD OF EXAMINERS AND REGISTRATION OF ARCHITECTS

Date: December 14, 1995

State Board of Examiners and Registration of Architects

- (1) Regulation Number and Title: **201 KAR 19:035**, Qualifications for examination.
- (2) General Government Cabinet, State Board of Examiners and Registration of Architects 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 January 31, 1996 at 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 31, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: General Government Cabinet, State Board of Examiners and Registration of Architects, P.O. Box 22097, Lexington, Kentucky 40522.
- (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 Examiners and Registration of Architects 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 examination and regulation of architects is KRS Chapter 323.
 - (b) The administrative regulation that the cabinet intends to promulgate will amend 201 KAR 19:035, as follows: Sections 3, 4 and 5 amend issue dates of National Council of Architectural Registration Boards (NCARB) Circulars of Information No. 1 and 3, incorporated by reference. Section 5 also is amended to include current mailing address of the board office.
 - (c) The necessity and function of the proposed administrative regulation is: The qualifications for admission to examination need to be periodically updated.
 - (d) The benefits expected from administrative regulation are: Need to be current.

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- (e) The administrative regulation will be implemented as follows: Public and profession notified to advise future candidates.

GENERAL GOVERNMENT CABINET Board of Nursing

Date: November 29, 1995
General Government Cabinet
Board of Nursing

- (1) **201 KAR 20:070**, Licensure by examination.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 29, 1996 at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 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 January 29, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (b) On a request for public hearing, a person 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 General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
 - (b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:070, Licensure by examination. It will eliminate the need for graduates of Kentucky schools to provide a transcript.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The board must verify that an applicant has graduated from an approved program of nursing.
 - (d) The benefits expected from the administrative regulation are: The application requirements for graduates of Kentucky schools will be simplified and expedited.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board

Date: December 4, 1995
General Government Cabinet
Kentucky Real Estate Appraisers Board

- (1) **201 KAR 30:040**, Standards of practice administrative regulation.
- (2) The Kentucky Real Estate Appraisers Board intends to promulgate the administrative regulation listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 26, 1996 at 10 a.m., 3572 Iron Works Pike, Room 308, Lexington, 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 January 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40602-8410.
- (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 by writing to James P. Daniels at the above address, or by calling (606) 255-0144 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to reporting forms is KRS 324A.035.
 - (b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:040. It will adopt the 1996 edition of Uniform Standards of Professional Appraisal Practice.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Sets forth the standards of practice regulating the conduct of licensed and certified appraisers.

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(d) The benefits expected from the proposed administrative regulation is that the standards of practice for licensed and certified appraisers will be in accord with the most recent edition of Uniform Standards of Professional Appraisal Practice.

KENTUCKY BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS

Date: December 15, 1995

Kentucky Board of Registration for Professional Geologists

- (1) The subject matter of the proposed administrative regulation, **201 KAR 31:060**, is a code of ethics.
- (2) The Kentucky Board of Registration for Professional Geologists 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 January 30, 1996, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, 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 January 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Registration for Professional Geologists at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to a code of ethics is KRS 322A.030(5) and (6).
 - (b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It sets forth in detail the code of ethics which registered professional geologists shall follow.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 322A.030(5) and sets forth in detail the code of ethics which registered professional geologists shall follow.
 - (d) The benefits expected from administrative regulation are: The registered professional geologists will be informed about how they are to conduct their practice in an ethical manner.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the code of ethics which registered professional geologists shall follow. The code of ethics will then be disseminated to all registered persons.

KENTUCKY BOARD OF CERTIFICATION OF MARRIAGE AND FAMILY THERAPISTS

Date: December 15, 1995

Kentucky Board of Certification of Marriage and Family Therapists

- (1) The subject matter of the proposed administrative regulation, **201 KAR 32:040**, is per diem compensation.
- (2) The Kentucky Board of Certification of Marriage and Family Therapists 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 January 31, 1996, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, 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 January 31, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Certification of Marriage and Family Therapists 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 per diem compensation is KRS 335.320.
 - (b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It sets forth in detail the per diem compensation which will be paid.

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(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 335.320(7) and 335.325(1) and sets forth in detail the per diem compensation which will be paid.

(d) The benefits expected from administrative regulation are: The per diem compensation which will be paid will be established.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the per diem compensation which will be paid.

Date: December 15, 1995

Kentucky Board of Certification of Marriage and Family Therapists

(1) The subject matter of the proposed administrative regulation, **201 KAR 32:050**, is a code of ethics.

(2) The Kentucky Board of Certification of Marriage and Family Therapists 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 January 31, 1996, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, 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 January 31, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Certification of Marriage and Family Therapists at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a code of ethics is KRS 335.320 (5) and (7).

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It sets forth in detail the code of ethics which certified marriage and family therapists shall follow.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 335.320(5) and 335.325(2) and sets forth in detail the code of ethics which certified marriage and family therapists shall follow.

(d) The benefits expected from administrative regulation are: The marriage and family therapists will be informed about how they are to conduct their practice in an ethical manner.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the code of ethics which certified marriage and family therapists shall follow. The code of ethics will then be disseminated to all certified persons.

Date: December 15, 1995

Kentucky Board of Certification of Marriage and Family Therapists

(1) The subject matter of the proposed administrative regulation, **201 KAR 32:060**, is continuing education.

(2) The Kentucky Board of Certification of Marriage and Family Therapists 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 January 31, 1996, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, 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 January 31, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Certification of Marriage and Family Therapists 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 continuing education is KRS 335.320(7) and KRS 335.340(1)(b).

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It sets forth in detail the continuing education requirements which must be met by each certified person in order to renew their certification.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 335.320(7)

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and KRS 335.340(1)(b) and sets forth in detail the continuing education requirements which must be met by each certified person in order to renew their certification.

(d) The benefits expected from administrative regulation are: The marriage and family therapists will be informed about the continuing education requirements for certification renewal.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish the continuing education requirements for certification renewal. The continuing education requirements will then be disseminated to all certified persons.

KENTUCKY BOARD OF CERTIFICATION FOR PROFESSIONAL ART THERAPISTS

Date: December 15, 1995

Kentucky Board of Certification for Professional Art Therapists

(1) The subject matter of the proposed administrative regulation, **201 KAR 34:010**, is the establishment of definitions which will assist the board in evaluating the qualifications of candidates for certification.

(2) The Kentucky Board of Certification for Professional Art Therapists 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 January 30, 1996, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, 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 January 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Certification for Professional Art Therapists 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 definitions which will assist the board in evaluating the experiential qualifications of candidates for certification is KRS 309.1315(1),(4), and (11) and KRS 309.133.

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will establish the definitions necessary for the evaluation of applications.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 309.133 sets forth the requirements for certification as a marriage and family therapist. The board is required to review the applications of applicants for certification. This regulation will establish the definitions necessary for the evaluation of applications.

(d) The benefits expected from administrative regulation are: Persons not holding certification may qualify for certification by being able to show appropriate qualifications.

(e) The administrative regulation will be implemented as follows: This regulation will establish the definitions necessary for the evaluation of applications. The board will then review applications and grant certification.

TOURISM CABINET

Department of Fish and Wildlife Resources

Date: December 15, 1995

Tourism Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Numbers and Titles: **301 KAR 2:251**, Hunting and trapping seasons and limits for furbearers and small game; **301 KAR 2:049**, Seasons for furbearers and small game on specified areas.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be canceled.

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

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

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

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

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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 from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.015, 150.021, 150.170 and 150.175.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:251 and 301 KAR 2:049 as follows: Establish an opening date for quail and rabbit seasons of the day after the modern gun deer season for counties in the First and Second Wildlife Districts; redefine the modern gun deer season to allow small game hunting immediately after the end of deer season in counties with five-day gun deer hunts; and make opening dates on wildlife management areas correspond to opening dates in the counties in which they are located.

(c) The necessity and function of the proposed administrative regulation is to establish a later small game opening date in areas where crops are still in the fields in early November.

(d) The benefits expected from the administrative regulation are reduced landowner-hunter conflicts.

(e) This administrative regulation will be implemented by notification of its provisions in the department's usual media outlets and by seasonal hunting brochures, and enforcement by the department's Division of Law Enforcement.

Date: December 15, 1995

Tourism Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Numbers and Titles: **301 KAR 5:020**, License agent requirements and responsibilities; **301 KAR 5:030**, Purchasing licenses and obtaining replacement licenses.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for January 30, 1996, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation administrative regulations governing the sale of hunting and fishing licenses is KRS 150.195.

(b) The administrative regulations that the department intends to promulgate will not amend existing administrative regulation. 301 KAR 5:020 will specify the requirements and procedures that license agents shall follow in selling licenses, reporting sales and depositing the proceeds from license sales. It also specifies the reasons for suspension or revocation of agent status and details the process of appealing a suspension or revocation. 301 KAR 5:030 will require that license purchasers provide their date of birth and an identification number and complete the blanks on the license. It also specifies the procedures to be followed for replacing a lost license or obtaining a refund for duplicate licenses.

(c) The necessity and function of the proposed administrative regulations is to codify the requirements for both license sales agents and license purchasers using an automated license sales and reporting system that is being implemented with 1996 license sales.

(d) The benefits expected from the administrative regulations are a system which replaces preprinted licenses with computer-generated licenses at the point of sale, and electronic reporting of sales data and electronic remittance of license receipts to the department. This system will save, time, printing costs and paperwork on the part of agents and the department, and will better serve the license-buying public by making all licenses available at all times.

(e) The administrative regulation will be implemented as follows: Provisions of these administrative regulations will be communicated to license agents and license buyers through personal contact, newsletters, and media releases. Enforcement will be by the department's Division of Law Enforcement.

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

Date: December 11, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division of Water

(1) The subject matter of the administrative regulations to be amended are: **401 KAR 5:001**, Definitions of terms used in 401 KAR Chapter 5, **401 KAR 5:005**, Permits to discharge sewage; industrial and other wastes; definitions; and two new administrative regulations **401 KAR 5:006 and 5:007** relating to planning and construction and operating permit requirements for wastewater facilities.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for January 30, 1996, at 1 p.m. (eastern time), in the Capital Plaza Tower Auditorium, Mero 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 January 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, 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 of Water at the address listed above.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulations relating to definitions for 401 KAR Chapter 5 and permits to discharge sewage is KRS 224.01-110, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110.

(b) The administrative regulations that the Division of Water intends to promulgate will amend 401 KAR 5:001, Definitions of terms used in 401 KAR Chapter 5, and 401 KAR 5:005, Permits to discharge sewage; industrial and other wastes; definitions; and create two new administrative regulations, 401 KAR 5:006 and 5:007, relating to planning and construction and operational permit requirements for wastewater facilities. 401 KAR 5:005, 5:006, and 5:007 will clarify the information needed to accompany a permit application; update the engineering techniques that are required for permit approval; allow the cabinet to recover review fees for reviews of applications that are denied and for separate plan review of sewer lines and WWTPs that are a part of the same application; coordinate the issuance of the construction permit with the KPDES permit; require facilities to plan for the expansion of their plants or prepare a regionalization report or facility plan to fully evaluate the feasibility of connecting to an existing WWTP instead of creating a new or larger discharge; and require facility owners or operators to provide financial assurances that the facility will be constructed and operated pursuant to KRS Chapter 224. Siting requirements for new facilities include a buffer zone of 200 feet from the nearest residence and a requirement of connecting to a regional system under specified conditions. The buffer zone requirement would reduce the impacts of noise and odor around a wastewater treatment plant and thus reduce complaints from surrounding residents and the requirement for connection to a regional system would reduce the number of small facilities. Additional requirements for discharges to sinkholes will include dye studies and effluent limits. The definitions that will be added to 401 KAR 5:001 will be those necessary to accommodate the changes to 401 KAR 5:005, 5:006, and 5:007. Affected facilities and other interested parties are asked to provide other topics and solutions which would improve construction and operation of wastewater facilities and maintain the waters of the Commonwealth.

(c) The Necessity and Function of the proposed administrative regulations is as follows: The Natural Resources and Environmental Protection Cabinet is authorized to promulgate administrative regulations for the prevention, abatement, and control of water pollution. 401 KAR 5:001 provides the definitions of terms that are used throughout 401 KAR Chapter 5, and 401 KAR 5:005 currently provides administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized under KRS Chapter 224, including wastewater treatment plants (WWTPs), sewer lines, and pump stations. Since the initial promulgation of 401 KAR 5:005 in 1975, the industry's technology and practices have changed resulting in better systems being built and better operation of those facilities and thus improved water quality. Also, experience has shown that small wastewater treatment plants have more equipment and operational problems, thus resulting in decreased water quality and significant short-term problems such as fish kills. These regulations are being amended or added to require increased reliability and the updated technologies and practices thus resulting in improved water quality and to add the necessary definitions. Facilities also will be required to plan for future expansions and to consider the growth of the areas they serve pursuant to Sections 201 and 208 of the Clean Water Act. Finally, facility owners or operators may be required to post a performance bond or other financial assurances that their facility will be constructed and continue to be operated according to environmental statutes and regulations.

(d) The benefits expected from the administrative regulations are: Permit applicants will better understand the requirements for permit issuances resulting in more complete applications and faster permit issuances. Also, incorporation of the most recent engineering practices, requirements for increased reliability of wastewater systems, and requirements on operators of WWTPs to plan for expansions and possible regionalization will result in improved ground and surface water quality and minimize serious short-term problems. Finally, elimination of excessive infiltration and inflow will reduce the operational costs of WWTPs and reduce the overflow of raw sewage to streams during rain events, also resulting in improved water quality for the Commonwealth. Financial assurances will protect the customers of wastewater facilities that are unable to properly construct or operate their facilities.

(e) The administrative regulations will be implemented as follows: On and after the effective date of these administrative regulations, construction and operational permits for facilities will be reviewed and issued according to the terms and procedures in 401 KAR 5:001, 5:005,

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5:006, and 5:007 as a part of the cabinet's existing regulatory program. Construction permits are issued for new or expanding sewer lines, pump stations, and wastewater treatment plants; operational permits are issued for wastewater treatment plants which do not have a discharge to a water of the Commonwealth and for sewer systems which discharge to a wastewater treatment plant or sewer system which is owned by another person.

JUSTICE CABINET Department of Corrections

Date: December 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: transportation of inmates; special management inmates; inmate grievance procedure; meritorious good time; unauthorized substance abuse testing; assessment center operations; inmate conflicts; parole progress reports; referral procedure for inmates adjudicated guilty but mentally ill; protective custody; inmate furloughs; community center program; and expedient release.

(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 January 31, 1996 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 January 31, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. Transportation of inmates (9.9) shall be amended to streamline the procedures for transporting inmates.
2. Special management inmates (10.2) shall be amended to reflect the procedure for placing inmates in temporary holding cells.
3. 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.
4. Meritorious good time (15.3) shall be amended to clarify the procedure for recommendations for awards of meritorious good time.
5. Unauthorized substance abuse testing (15.8) shall be added to describe the method for collecting urine samples for testing to detect the unauthorized use of drugs.
6. Assessment center operations (17.2) shall be amended to reflect the current practice of reporting operational matters to the Warden.
7. Inmate conflicts (18.3) shall be added to reflect the procedure for investigating and documenting conflicts between inmates.
8. Parole progress reports (18.10) shall be amended to clarify the procedure for sending information to the Parole Board.

9. 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.

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

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

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

13. Expedient release (25.7) shall be amended to include all offenders in adult institutions, correctional centers and jails, to clarify the information required in a parole plan and set forth procedures for implementing expedient release for in-state and out-of-State.

(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: December 13, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary: inmate grooming and dress code; visiting program.

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(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 January 31, 1996, 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 January 31, 1996, 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 6:040, as follows:

1. Inmate grooming and dress code (15-01-01) shall be amended to comply with policy regarding state issued clothing.
2. Visiting program (16-01-01) shall be amended to comply with policy regarding state issued clothing.

(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: December 13, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex: educational assistance program; drug abuse testing; inmate packages; inmate personal property; correctional industries.

(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 January 31, 1996, 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 January 31, 1996, 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. Educational assistance program (04-04-01) shall be deleted due to the information in this policy being covered in Corrections Policies and Procedures.
2. Drug abuse testing (09-00-01) shall be amended with minor changes in regard to refusal of a drug or alcohol test per the time allotted in revised CPP 15.2.

3. Inmate packages (16-04-01) shall be amended with minor changes throughout policy.

4. Inmate personal property (17-01-01) shall be amended with minor changes throughout policy.

5. Correctional industries (19-04-02) shall be amended with minor changes throughout policy.

(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.

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(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.

JUSTICE CABINET Department of State Police

Date: November 6, 1995
Justice Cabinet
Department of State Police

- (1) **502 KAR 50:010**. Admissibility of evidence.
- (2) The Department of State Police intends to amend the administrative regulation cited above to comply with KRS 13B.170.
- (3) A public hearing to receive oral and written comments on the proposed amended regulation has been scheduled for January 29, 1996 at 10 a.m., at 919 Versailles Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 29, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 919 Versailles Road, Frankfort, Kentucky 40601, attention Charles Johnson.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing." or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of State Police at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 13B.170.
 - (b) The administrative regulation the Kentucky State Police intends to amend is a current regulation and the amendment coincides with the administrative hearing provisions in KRS 13B.005 to 13B.170.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To provide mechanisms for Trial Board procedures relating to discovery.
 - (d) The benefits expected from the proposed administrative regulation are: To allow the department to conduct administrative hearings in compliance with KRS 13B.005 to 13B.170.

KENTUCKY BOARD OF EDUCATION

Date: December 11, 1995
Kentucky Board of Education

- (1) **701 KAR 5:076**. Repeal of 701 KAR 5:075, Antinepotism certifications of superintendents. The proposed administrative regulation repeals 701 KAR 5:075 which requires superintendents to file statements annually with the Department of Education to affirm compliance with statutory requirements relating to antinepotism in hiring. Three years have elapsed since the regulation went into effect, and in that time it appears superintendents have become very aware of the applicable antinepotism statute, KRS 160.380. Any violations of the statute can be enforced through other laws and procedures.
- (2) The Kentucky Board of Education intends to repeal 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 January 30, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to antinepotism certifications of superintendents is KRS 156.070 and 156.160.
 - (b) The administrative regulation that the Department of Education intends to promulgate will repeal the regulation requiring superintendents to file an annual sworn statement as to whether the school district is in compliance with the antinepotism provisions of the law.

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- (c) The necessity and function of the proposed administrative regulation is to repeal a regulation that is no longer necessary.
- (d) The benefit expected from the administrative regulation is to deregulate and remove a reporting requirement.

Date: December 11, 1995
Kentucky Board of Education

(1) **702 KAR 3:270**, SEEK funding formula. The proposed amended administrative regulation sets forth the guidelines for the calculations to distribute funds to local school districts through the Support Education Excellence in Kentucky (SEEK) Program. The proposed amendment causes prior year property assessments rather than current year property assessment to be used in the calculation.

(2) The Kentucky Board of Education intends to amend 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 January 30, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to the SEEK funding formula is KRS 156.070 and 156.160.

(b) The administrative regulation that the Department of Education intends to amend sets forth the guidelines for the calculations to distribute funds to local school districts through the Support Education Excellence in Kentucky (SEEK) Program. The proposed amendment causes prior year property assessments rather than the current year to be used in the calculation.

(c) The necessity and function of the proposed administrative regulation intends to amend sets forth the guidelines for the calculations to distribute funds to local school districts through the Support Education Excellence in Kentucky (SEEK) Program. The proposed amendment causes prior year property assessments rather than the current year to be used in the calculation.

(d) The benefit expected from the administrative regulation is to provide the Department of Education guidance on the calculation of the SEEK Program.

Date: December 18, 1995
Kentucky Board of Education

(1) **702 KAR 7:065**, Designation of agent to manage high school interscholastic athletics, proposed amended administrative regulation. This proposed amendment adopts the 1995-96 handbook, including bylaw amendments of the Kentucky High School Athletic Association (KHSAA).

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Education intends to promulgate is an amended administrative regulation. It will adopt the 1995-96 handbook of the KHSAA.

(c) The necessity and function of the proposed amended administrative regulation is to amend 702 KAR 7:065E, which designates the agent to manage high school interscholastic athletics and adopts the 1995-96 KHSAA Handbook.

(d) The benefit expected from the amended administrative regulation is to determine who will manage high school interscholastic athletics and what conditions this entity and its members must adhere to.

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EDUCATION PROFESSIONAL STANDARDS BOARD

Date: November 28, 1995

Education Professional Standards Board

- (1) **704 KAR 20:084.** Interdisciplinary early childhood, birth to primary.
- (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 amended regulation has been scheduled for January 26, 1996 at 10 a.m., at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 26, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing." or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the 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 preparation and certification for the issuance of a certificate for interdisciplinary early childhood education, birth to primary, is KRS 161.028.
 - (b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:084. When this regulation was initially adopted in October 1994, the test of knowledge specific to interdisciplinary early childhood teaching had not been developed and validated. The Education professional Standards Board has now completed the development and validation. The amendment will identify the test of knowledge specific and the minimum passing score. In addition, because this is the first Kentucky certification issued for interdisciplinary early childhood, birth to primary, there are no certified teachers of birth to primary to supervise the student teaching experience. The amendment proposes that early childhood teachers serving in approved preschool programs during the 1994-95 school year and who have received letters certifying their eligibility to continue serving in the same position without any additional certification may serve as supervising teachers for teacher candidates in interdisciplinary early childhood as well as teachers holding a master's degree with emphasis in early childhood and 3 years of teaching experience.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 requires 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. Additionally, the statute requires teacher education institutions to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary; the teacher standards; and the standards for approval of programs leading to such a certificate.
 - (d) The benefits expected from the administrative regulation are: The proposed amendment will (1) establish the test of knowledge specific and the minimum passing score required to satisfy the testing prerequisites for the interdisciplinary early childhood education certificate, and (2) identify the qualifications for persons who will serve as supervising teachers for the student teaching experience.
 - (e) The administrative regulation will be implemented as follows: The amended regulation will be communicated to colleges/universities and to local school district personnel by the Office of Teacher Education and Certification. Staff in the Division of Certification will respond to inquiries by applicants and issue the interdisciplinary early childhood education certificate, birth to primary, to qualified applicants.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

Date: December 6, 1995

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

- (1) Regulation Number and Title: **803 KAR 2:317.** Special industries.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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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 Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:317, as follows: The revision of 29 CFR Part 1910.266, "Logging," as published in the Federal Register, Volume 60, Number 174, September 8, 1995, will be incorporated by reference. This proposed amendment provides protection for all employees engaged in logging operations. This regulation addresses the unique hazards found in logging operations, strengthens and clarifies some provisions of the existing standard.

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

(d) The benefits expected from the proposed administrative regulation are: The revisions as proposed in this amendment will clarify existing regulations for employers and employees allowing for a better understanding of the regulations, resulting in a safer and more healthful workplace and will add additional protection to those involved in logging operations.

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

Date: December 6, 1995

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:404**. Personal protective and life saving equipment.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:404, as follows: The restoration of 29 CFR 1926.104, 29 CFR 1926.105, and paragraphs (b), (c), and (f) of 29 CFR 1926.107, as published in the Federal Register, Volume 60, Number 148, August 2, 1995, will be incorporated by reference. This revision restores the criteria for safety belts, lifelines, lanyards and safety nets. This proposed amendment provides protection for all employees engaged in steel erection in the construction industry.

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

(d) The benefits expected from the proposed administrative regulation are: The revisions as proposed in this amendment will clarify existing regulations for employers and employees allowing for a better understanding of the regulations, resulting in a safer and more healthful workplace and will add additional protection to those involved in steel erection in the construction industry.

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

Date: December 6, 1995

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:412**. Fall protection.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the 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 January 30, 1996, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:412, as follows: The revision of 29 CFR 1926.500, as published in the Federal Register, Volume 60, Number 148, August 2, 1995, will be incorporated by reference. This revision clarifies that this regulation does not cover those involved in steel erection activities in the construction industry, but that such coverage is offered by other regulations.

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

(d) The benefits expected from the proposed administrative regulation are: The revisions as proposed in this amendment will clarify existing regulations for employers and employees allowing for a better understanding of the regulations, resulting in a safer and more healthful workplace.

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

PUBLIC SERVICE COMMISSION

Date: December 14, 1995

Public Service Commission

(1) Regulation Number and Title: **807 KAR 5:062**. Changing primary interexchange carrier; verification procedures.

(2) The Kentucky Public Service Commission 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 January 31, 1996, at 10 a.m., eastern standard time, in Hearing Room 1, 730 Schenkel Lane, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Mr. Don Mills, Executive Director, Kentucky Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to service supplied by a utility is KRS 278.040(3) and 278.280(2).

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will be a new regulation. It will prescribe procedures for verifying customer-ordered changes of presubscribed long distance carriers. Section 1 will provide definitions of key terms used in the regulation: "interexchange carrier," "letter of agency," "local exchange carrier," "long distance telecommunications service," "primary interexchange carrier, or PIC," and "two-PIC system." Section 2 will prescribe alternative procedures by which a soliciting carrier may verify that a customer has actually ordered a change in his presubscribed long distance carrier. The interexchange carrier may obtain a signed, written document that (1) demonstrates the change is authorized; (2) demonstrates the customer understands what occurs when the change occurs; (3) contains the customer's billing name and address and each telephone number to be covered by the change order; and (4) demonstrates the customer understands the fee he will incur. In addition, if the order pertains to an area with a "two-pic" system, i.e., an area where a customer may presubscribe to separate intraLATA (short haul) and interLATA (long haul) long distance carriers, the written document must clearly state whether the customer has authorized the change of his intraLATA carrier, his interLATA carrier, or both. The soliciting carrier will also have the option of obtaining a customer's electronic authorization for the change. If this method is used, the electronically recorded authorization must

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contain the same information as a written verification. Section 3 will require all written and electronically recorded verifications to be retained by the soliciting carrier for one year after the date the primary interexchange carrier change has become effective. Section 4 will provide that letters of agency authorizing a carrier change must be separate or severable from promotions or inducements except when the letter of agency is combined with a check. A letter of agency check will be required to contain, in bold face type near the signature line, a statement that the customer is authorizing a long distance carrier change. In addition, the letter of agency check may contain only the information required by Section 2 of the regulation and the language necessary to make the check a negotiable instrument.

(c) The necessity and function of the proposed administrative regulation is as follows: Competition among long distance carriers has resulted in a particularly insidious type of consumer fraud where a customer is switched from one long distance carrier to another without having knowingly authorized the change. Marketers have, in some instances, disguised documents authorizing long distance carrier changes as contest entries or checks deliberately to mislead consumers. Other marketers have simply lied to local exchange carriers, claiming that the customer ordered the change when in fact the customer did not. In order to control this sort of fraud, which is known as "slamming," the commission plans to promulgate a regulation that will help ensure that targeted customers understand what a carrier change involves and will clearly describe the methods by which legitimate carrier change orders will be recorded. The regulation is expected to discourage fraud. Furthermore, the verification records will enable the commission to determine whether or not a customer who complains has been "slammed." The proposed administrative regulation states the specific evidence of consumer understanding that the soliciting carrier must obtain prior to having a customer's long distance carrier changed. It also prescribes specific methods by which the soliciting carrier must record and preserve the evidence. Finally, it prescribes specific aspects of the change the customer must indicate that he understands before the soliciting carrier may implement the change.

(d) The benefits expected from the proposed amendments to the administrative regulation are: Kentucky consumers will have greater protection against "slamming." In addition, the commission will be able to ascertain with relative ease whether appropriate verification has been obtained and whether an allegedly "slammed" customer has actually authorized, and understood, a change of his long distance carrier. Finally, carriers which comply with the regulation will have the assurance of knowing that they can defend themselves against any frivolous charges of "slamming."

(e) The administrative regulation will be implemented as follows: All customer-ordered changes of long distance carriers, whether short haul or long haul or both, must be verified in accordance with the regulation's procedures immediately upon the effective date of the regulation.

CABINET FOR HUMAN RESOURCES Office of Inspector General

Date: December 11, 1995
Cabinet for Human Resources
Office of Inspector General

(1) 900 KAR 2:020 - Appeals.

(2) The Office of Inspector General intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to appeals of decisions on ratings, citations or penalties pursuant to KRS 216.537 to 216.590 is KRS 216.567.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend the hearings provisions of 900 KAR 2:020 to conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: To set forth the procedure by which appeals from assignment of ratings, imposition of citations and assessment of penalties shall be pursued within the Cabinet for Human Resources.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the requirements of KRS Chapter 13B for administrative hearings.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 13B.005 to 13B.170 and 216.567.

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Date: December 11, 1995
Cabinet for Human Resources
Office of Inspector General

- (1) **900 KAR 2:060** - Hearings concerning transfer and discharge rights.
- (2) The Office of Inspector General intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (VTDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the decision making process for appeals related to involuntary transfer and discharge is KRS 216.515, 216.525, 216.557, 216.560, 216.567 and 42 CFR 483.12.
 - (b) The administrative regulation that the Office of Inspector General intends to promulgate will amend the hearing provisions of 900 KAR 2:060 to conform with the requirements of KRS Chapter 13B governing administrative hearings.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To set forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and regulations.
 - (d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the requirements of KRS Chapter 13B for administrative hearings.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 13B.005 to 13B.170, 216.515, 216.525, 216.557, 216.560, 216.567 and CFR 483.12.

Department for Health Services Division of Maternal and Child Health

Date: December 15, 1995
Cabinet for Human Resources
Department for Health Services
Division of Maternal and Child Health

- (1) **902 KAR 4:010**. Lay-midwifery.
- (2) Cabinet for Human Resources, Department for Health Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (VTDD).

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 4:010 is KRS 194.050; 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 4:010. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Maternal and Child Health

(1) **902 KAR 4:015.** Nurse-midwifery.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 4:015 is KRS 194.050; 211.090; 211.180.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 4:015. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Maternal and Child Health

(1) **902 KAR 4:040.** Special supplemental food program for women, infants and children (WIC).

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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(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 902 KAR 4:040 is KRS 194.050(1); 211.190; 211.180; 7 CFR Part 246, 42 USC 1786.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 4:040. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Division of Environmental Health and Community Safety

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 7:010.** Hotel and motel code.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 7:010 is KRS 194.050; 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 7:010. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Division of Health Systems Development

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Health Systems Development

(1) **902 KAR 8:140.** Appointment of a health officer or a health department director of a local health department.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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

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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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 8:140 is KRS 194.050; 211.090; 212.170; 1994 Ky. Acts ch. 336.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 8:140. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Division of Environmental Health and Community Safety

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 9:010.** Environmental health - state confinement facilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 9:010 is KRS 194.050; 211.090; 211.925.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 9:010. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:020.** Frozen food lockers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 10:020 is KRS 194.050; 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:020. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the Food Stamp Program.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:030.** Sanitarians.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 10:030 is KRS 194.050; 211.090, HB 799, Part I, G., 56., d. (1990 Acts, ch. 514, pp. 1734-1735, 1736) "Budget Modification Report, Human Resources"; Final Budget Memorandum, Volume II, Page 288 (April 13, 1990).

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:030. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

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Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:040.** Kentucky youth camps.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 10:040 is KRS 194.050; 211.090(3).

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:040. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:045.** Tatoo artists; tatoo studios.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 10:045 is KRS 194.050; Chapter 211, 211.760.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:045. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing

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procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:120.** Kentucky swimming pool and bathing facilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 10:120 is KRS 194.050; 211.090(3), HB 492 (1988 Acts).

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:0120. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:140.** On-site sewage disposal system installer certification program standards.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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.

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(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 10:140 is KRS 194.050; 211.090(3); 211.180(3); 211.357.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:140. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:150.** Domestic septage disposal site approval procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 10:150 is KRS 211.980 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:150. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:160.** Domestic septage disposal site operation.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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(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 902 KAR 10:160 is KRS 211.980 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:160. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:170.** Septic tank servicing.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 10:170 is KRS 211.980 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:170. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

(1) **902 KAR 13:010.** Definitions for 902 KAR Chapter 13.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Commissioner's Office,

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Department for Health Services, 275 E. Main Street, Frankfort, Kentucky. 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: Certification of emergency medical technicians (EMTs) is KRS 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will establish definitions related to certification of emergency medical technicians.

(c) The necessity and function of the proposed administrative regulation is as follows: To define terms that are used in administrative regulations promulgated by the cabinet relating to emergency medical technicians (EMTs).

(d) The benefit expected from administrative regulation is: Consistency in defining terms relating to EMTs certified in Kentucky.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

(1) **902 KAR 13:020.** Applicant requirements for EMT training and certification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: Applicant requirements for certification and training of emergency medical technicians (EMTs) is KRS 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Delete priority of applicants for training and include two new standards for certification:

1. Applicant shall be at least 18 years of age by the completion of the training course; and
2. Applicant shall hold at least a high school diploma or equivalent or meet reading and educational levels of EMT basic functional position description.

(c) The necessity and function of the proposed administrative regulation is as follows: Establishes requirements and standards for applicant's for training and certification as emergency medical technicians (EMTs).

(d) The benefit expected from administrative regulation is: Standard requirements for training and certification of applicant's as emergency medical technicians (EMTs).

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

(1) **902 KAR 13:050.** Training, examination, certification and recertification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: Training, examination, certification and recertification of emergency medical technicians (EMTs) is KRS 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will:

1. Establish a schedule for implementing the new United States Department of Transportation "1994 National Curriculum Emergency Medical Technician-Basic" for training, examination, certification and recertification of all levels of emergency medical technicians (EMTs);

2. Provide for pilot programs;

3. Establish standards for a transition course to the new curriculum;

4. Delete Brady text requirement and allow instructors and implementing agencies to choose texts; and

5. Require the instructor to file a course syllabus.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish requirements for training, examination, certification and recertification of all levels of emergency medical technicians (EMT) under the new U.S. Department of Transportation "1994 National Curriculum Emergency Medical Technician-Basic".

(d) The benefit expected from administrative regulation are: Implementation of the new U.S. Department of Transportation "1994 National Curriculum" including updated training for currently certified EMTs.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

(1) **902 KAR 13:070.** EMT instructors and EMT instructor trainers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: Certification of emergency medical technicians (EMTs) is: KRS 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Allows EMTs certified in Kentucky to perform new procedures under medical direction which are allowable under the U.S. Department of Transportation "1994 National Curriculum, Emergency Medical Technician-Basic". Establishes standards for pilot programs to evaluate the new curriculum; and sets standards for Kentucky certified EMTs to test for Kentucky certification using the National Registry and the standards of the National Registry for testing.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish procedures which EMTs certified in Kentucky are authorized to perform.

(d) The benefit expected from administrative regulation is: To establish uniformly the medical procedures which EMTs certified in Kentucky are authorized to perform.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

(1) **902 KAR 13:080.** Definitions for 902 KAR Chapter 13.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: Certification of emergency medical technicians (EMTs) is: KRS 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Allow EMTs certified in Kentucky to perform new procedures under medical direction which are allowable under the U.S. Department of Transportation "1994 National Curriculum, Emergency Medical Technician-Basic". Establishes standards for pilot programs to evaluate the new curriculum; and sets standards for Kentucky certified EMTs to test for Kentucky certification using the National Registry and the standards of the National Registry for testing.

(c) The necessity and function of the proposed administrative regulation is as follows: Establish procedures which EMTs certified in Kentucky are authorized to perform.

(d) The benefit expected from administrative regulation is: To establish uniformly the medical procedures which EMTs certified in Kentucky are authorized to perform.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 15:010**. Mobile homes.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 15:010 is KRS 194.050 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 15:010. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

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Date: December 15, 1995
Cabinet for Human Resources
Department for Health Services
Division of Environmental Health and Community Safety

(1) **902 KAR 15:020.** Recreational vehicles.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 15:020 is KRS 194.050 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 15:020. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995
Cabinet for Human Resources
Department for Health Services
Division of Environmental Health and Community Safety

(1) **902 KAR 20:350.** Boarding homes.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 20:350 is KRS 194.050 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 15:350. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

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(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Division of Health Systems Development

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Health Systems Development

(1) **902 KAR 22:030**. Midlevel health care practitioner.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 22:030 is KRS 216.920 and 216.925.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 22:030. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Division of Environmental Health and Community Safety

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 45:005**. Retail food code.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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

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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 902 KAR 45:005 is KRS 194.050; 211.090; 219.031, 21 CFR Chapter 1, Subparts B, D, Subchapter B, Part 170.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 45:005. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 45:006.** Bed and breakfast.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 45:006 is KRS 194.050 and 217.125.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 45:006. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 45:020.** Shellfish.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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.

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(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 45:020 is KRS 194.050 and 217.125.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 45:020. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 45:040.** Carbonated beverages.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 45:040 is KRS 194.050 and 217.125.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 45:040. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 45:080.** Salvage.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 45:080 is KRS 194.050 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 45:080. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 45:100.** Vending machines.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 45:100 is KRS 194.050 and KRS 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 45:100. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 45:150.** School sanitation.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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

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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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 45:150 is KRS 194.050 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 45:150. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 100:070**. Violations and enforcement.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 100:070 is KRS 194.050 and 211.090; 211.844.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 100:070. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Division of Maternal and Child Health

Date: December 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of Maternal and Child Health

(1) **902 KAR 115:010**. Proceedings.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 30, 1996, 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 Health Services, Commissioner's Office, 1st Floor, 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 902 KAR 115:010 is KRS 211.190 and KRS 211.190(10).

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 115:010. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The Department is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from administrative regulation are: The benefits expected are that the Department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Department for Social Insurance Division of Management and Development

Date: December 15, 1995

Cabinet for Human Resources

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:016**, Standards for need and amount; AFDC.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Aid to Families with Dependent Children Program child care deduction is 45 CFR 255.3. The statutory authority for the increase in payment maximums is KRS 47.011 G. 50 a 2.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:016, Standards for need and amount; AFDC. This amendment changes AFDC policy as it relates to dependent care expenses that are incurred as a result of employment and revises the AFDC payment maximum. Currently, AFDC recipients who become employed must pay their own dependent care expenses up front. Existing AFDC policy states that AFDC recipients are allowed a dependent care disregard for dependent care expenses that are incurred, in calculating the amount of the AFDC payment, with the understanding that the amount disregarded is to be used to help in paying the dependent care expense. Several problems have been encountered in applying this policy. One problem is that in many cases the amount of the allowable dependent care disregard is not enough to cover the actual expense charged by the child care provider. Another problem is that in some instances providers experience problems in being paid and are then forced to refuse providing care for children of AFDC recipients.

As a result, we are proposing to change the existing policy by allowing a direct dependent care payment when certain criteria are met. There will still be instances in which the dependent care disregard must be applied. Allowing direct dependent care payments to employed AFDC recipients is beneficial to the welfare of both AFDC parents and children for various reasons. One benefit is that quality child care providers will be willing to accept and continue caring for children of AFDC recipients. Another benefit is the assurance of ongoing child care which will make AFDC recipients more reliable and responsible employees. This assurance of dependent care will also prevent lost hours due to lack of adequate child care which affect both the employer and the employee. Further, assured child care will reduce the risk of an AFDC recipient losing employment which could result in additional benefit costs to the state and deter self-sufficiency. The second change revises the AFDC payment maximums due to legislative action in the 1994 session that requires unexpended appropriations for AFDC benefits in FY 94 and FY 95 to be used to increase AFDC benefit grants by the same percentage for each family size. The cabinet estimates that approximately \$8,851,300 will be available from general funds from FY 94 and FY 95. That amount can be used to match \$20,771,500 in federal funds for a total of \$29,622,800 to apply towards the payment maximum increase.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Allowing direct dependent care payments to employed AFDC recipients is beneficial to the welfare of both AFDC parents and children for various reasons. 45 CFR 255.3 allows states several methods for guaranteeing the availability for child care. As required by KRS 47.011 G. 50 a 2., the increase to the payment maximum will bring the agency into compliance with state statute.

(d) The benefits expected from administrative regulation are: By allowing direct dependent care payments to employed recipients, recipients may have greater access to quality care and the agency will be allowing continuity of care as families move from AFDC to employment. Another benefit is the assurance of ongoing child care which will make AFDC recipients more reliable and responsible employees. This assurance of dependent care will also prevent lost hours due to lack of adequate child care which affect both the employer and the employee. Further, assured child care will reduce the risk of an AFDC recipient losing employment which could result in additional benefit costs to the state and deter self-sufficiency. This would be the first payment maximum increase since July 1989.

Date: December 15, 1995

Cabinet for Human Resources

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:055**, Hearings and appeals.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, 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 hearings and appeals is KRS 205.231 and 45 CFR 205.10.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend an existing administrative regulation. The cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings. The cabinet intends to clarify policy regarding timely request for a hearing; clarify policy when program benefits are continued or reinstated following a hearing request; establish a time frame of ten (10) days prior to the hearing date for sending the preliminary written notice of the time, date and place of the hearing; add a period of ten (10) days as the time frame the applicant or recipient has to establish that an abandonment of a hearing was due to good cause as established in the administrative regulation; add provisions allowing the postponement of a hearing; remove the provision of excluding a hearing officer from conducting a hearing in behalf of an applicant or recipient who has conducted previous hearings involving the same person; change from discretionary to mandatory the requirement of a hearing officer to disqualify himself due to personal knowledge of circumstances of the applicant or recipient; add provisions to allow the submission of available documentary evidence to be used during a telephonic hearing to be sent to the hearing officer and opposing party; allow a reversal of the Appeal Board decision in instances where the only issue of the hearing is incapacity or disability and an award letter regarding SSI, RSDI, Black Lung, Railroad retirement or VA benefit based on 100% disability is received by the applicant or recipient within twenty (20) days following the Appeal Board decision; provide for a ten (10) day time frame for the agency to restore benefits to the applicant or recipient due to a hearing decision that reverses the agency's action that reduced or discontinued the benefits; provide for special hearing provisions regarding the Job Opportunities and Basic Skills Program participants; remove all references to provisions established for the Medicaid

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program; review legal fees established pursuant to KRS 205.237; and amend existing language to comply with requirements in KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth procedures for hearings and appeals. The cabinet will amend the hearing provisions of this administrative regulation to conform with the requirements of KRS Chapter 13B and to comply with federal requirements regarding time frames applicable to the system of hearings available to applicants and recipients of the Aid to Families with Dependent Children Program.

(d) The benefits expected from administrative regulation are: Compliance with the administrative hearing procedures as mandated by KRS Chapter 13B; compliance with the Aid to Families with Dependent Children State Plan regarding the time limitation for a hearing request to be considered timely; compliance with federal regulations regarding the provision of adequate preliminary written notice of the time, date and place of the hearing by establishing a ten (10) day time frame; opportunity for applicants or recipients to request and receive a postponement of a hearing due to an essential reason beyond their control; compliance with federal regulations to promptly make corrective payments by providing for a ten (10) day time frame for the agency to restore benefits to the applicant or recipient due to hearing decisions that reverse the agency's action that reduced or discontinued the benefits; compliance with federal regulations for special provisions regarding the Jobs Opportunities and Basic Skills Program participants which require the establishment of a grievance procedure under the agency's fair hearing process for resolving complaints by or on behalf of individual participating in work-related programs and activities under Jobs Opportunities and Basic Skills Program; removal of all Medicaid content which will be contained in an administrative regulation to be promulgated by the Department for Medicaid Services; and conformity of existing language with KRS Chapter 13A drafting requirements.

Date: December 15, 1995

Cabinet for Human Resources

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:400**, Establishment, review, and modification of child support and medical support orders.

(2) The Department for Social Insurance intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, 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, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Child Support Enforcement Program is KRS 194.050; 205.710-205.800; 405.520.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:400, Establishment, review, and modification of child support and medical support orders. The cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(d) The benefits expected from administrative regulation are: Amendment of the hearing provisions of this regulation, 904 KAR 2:400, for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 3:060**, Administrative disqualification hearings and penalties.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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.

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(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 January 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 904 KAR 3:060 is KRS 194.050; 7 CFR 271.4; 7 CFR 273.15; FNS/Sero Regulations Supplement, 7 CFR 273.15-a-1 (82-14) (7-28-82); 7 CFR 273.16; FNS/Sero Regulations Supplement, 7 CFR 273.16-a-1 (83-5) (12-15-82).

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:060. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the Food Stamp Program.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 3:070**, Fair hearings.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 904 KAR 3:070 is KRS 194.050; 7 CFR 271.4; 7 CFR 273.15; FNS/Sero Regulations Supplement, 7 CFR 273.15-a-1 (82-14) (7-28-82); 7 CFR 273.16; FNS/Sero Regulations Supplement, 7 CFR 273.16-a-1 (83-5) (12-15-82).

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:070. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the Food Stamp Program.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

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Department for Social Services Division of Program Management

Date: December 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Program Management

(1) **905 KAR 1:180.** DSS policy and procedures manual.

(2) Cabinet for Human Resources, Department for Social 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 January 30, 1996 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 January 30, 1996, 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, 75 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 Services, Division of Program Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 1:180 is KRS 194.050; 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, and 600 to 645.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 1:180. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the DSS policy and procedures manual.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Program Management

(1) **905 KAR 1:320.** Fair hearing.

(2) Cabinet for Human Resources, Department for Social 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 January 30, 1996 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 January 30, 1996, 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 Services, Division of Program Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 1:320 is KRS 194.050; 45 CFR 205.10, 29 USC 794, 42 USC 12101 et seq., 2000a et seq.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 1:320. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the Child Welfare Services Programs.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: November 22, 1995

Cabinet for Human Resources

Department for Social Services

Division of Family Services

(1) **905 KAR 1:360**, Private child care levels of care.

(2) The Department for Social 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 January 30, 1996 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 January 30, 1996, the public hearing will be canceled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Services, Cabinet for Human Resources, 6th Floor West, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to rate of reimbursement for child-caring facilities which are consistent with the level of service provided is KRS 199.641(4).

(b) The administrative regulation the Department for Social Services intends to promulgate will not amend an existing administrative regulation. It will establish a private child care level of care reimbursement system with four levels that will include a rate based on the needs of the child. Providers will receive a set rate for each child, based on the level of care needed, and will provide services consistent with individual treatment plans. Providers must agree to provide services under the levels of care system which will include a "no reject, no eject" clause. Additionally the regulation will establish procedures for a "gatekeeper" who will be responsible for assigning levels of treatment needed by children, conducting utilization review and monitoring for quality assurance of the placements.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 199.641 provides that the Secretary for the Cabinet for Human Resources shall promulgate administrative regulations to establish the rate of reimbursement for child-caring facilities which are consistent with the level of services provided. This administrative regulation is necessary to enable the Cabinet for Human Resources to establish a level of care reimbursement system for private child care. The function of the administrative regulation is to establish procedures whereby each child shall be, initially and periodically, evaluated to assure classification in the appropriate level of care which shall determine both the type of placement and the rate of payment for that child.

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

1. Individual needs of children will control the type of care received and the cost of that care.

2. Agreed upon outcomes will increase the benefits to children and provide professionals with an objective measure of the success of service delivery.

3. A streamlined system using a contractor for assigning levels and monitoring placements will allow the department to focus on the needs of the children across the entire system.

4. Expenditures will be controlled by implementing a closer review of the service providers.

Date: December 15, 1995

Cabinet for Human Resources

Department for Social Services

Division of Program Management

(1) **905 KAR 2:100**, Certification of family child care homes.

(2) Cabinet for Human Resources, Department for Social 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 January 30,

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1996 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 January 30, 1996, 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 Services, Division of Program Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 2:100 is KRS 194.050; 199.898; 199.8982; 42 USC 602.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 2:100. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the certification of family child care homes.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: December 15, 1995

Cabinet for Human Resources

Department for Social Services

Division of Program Management

(1) **905 KAR 8:140**, Hearing procedures for area agency on aging contractor selection actions.

(2) Cabinet for Human Resources, Department for Social 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 January 30, 1996 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 January 30, 1996, 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 Services, Division of Program Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 8:140 is KRS 194.050; 205.204, 205.460-205.465, 42 USC 3027(a)(5), 45 CFR 1321.1

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 8:140. It will conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: The department was granted a limited waiver on hearing procedures as outlined in KRS Chapter 13B, based on requirements of the federal regulations for the Title III of the Older Americans Act of 1965.

(d) The benefits expected from administrative regulation are: The benefits expected are that the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

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Office of Inspector General

DATE: December 11, 1995
Cabinet for Human Resources
Office of Inspector General

- (1) **906 KAR 1:060** - Nursing Pool Hearings.
- (2) The Office of Inspector General intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (VTDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to licensure fees, standards of care and service, and procedures for enforcement of penalties for nursing pools is KRS 216.865 and 194.030(12)(b).
 - (b) The administrative regulation that the Office of Inspector General intends to promulgate will amend the hearings provisions of 906 KAR 1:060 to conform with the requirements of KRS Chapter 13B governing administrative hearings.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To set forth the procedure by which nursing pools may appeal negative licensure actions within the Cabinet for Human Resources.
 - (d) The benefits expected from this proposed administrative regulation are that the Cabinet will be in compliance with the requirements of KRS Chapter 13B for administrative hearings.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 13B.005 to 13B.170 and 216.865.

DATE: December 11, 1995
Cabinet for Human Resources
Office of Inspector General

- (1) **906 KAR 1:080** - Standards for Utilization Review.
- (2) The Office of Inspector General intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (VTDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the registration of private review agents is KRS 216B.042, 194.050, 211.464 and 311.133.

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(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend the hearings provisions of 906 KAR 1:080 to conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: To implement the program necessary to register private review agents.

(d) The benefits expected from this proposed administrative regulation are that the Cabinet will be in compliance with the requirements of KRS Chapter 13B for administrative hearings.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 13B.005 to 13B.170, 216B.042, 211.464 and 311.133.

Date: December 11, 1995

Cabinet for Human Resources

Office of Inspector General

(1) **906 KAR 1:090** - Postaudit appeal procedures of programs and vendors of services with whom the Cabinet for Human Resources has contracted.

(2) The Office of Inspector General intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, the public hearing will be canceled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to a postaudit process and an audit appeal process for programs and vendors of services with whom the Cabinet contracts is KRS 194.050(1).

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend the hearings provisions of 906 KAR 1:090 to conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide for a postaudit process and an audit appeal process for programs and vendors of services with whom the Cabinet contracts.

(d) The benefits expected from this proposed administrative regulation are that the Cabinet will be in compliance with the requirements of KRS Chapter 13B for administrative hearings.

(e) The administrative regulation will be implemented as follows: By the Division of Audits in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 13B.005 to 13B.170 and 194.050(1).

Date: December 11, 1995

Cabinet for Human Resources

Office of Inspector General

(1) **906 KAR 1:100** - Nurse aide registry, abuse registry and hearing procedures.

(2) The Office of Inspector General intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996, 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 January 30, 1996, 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.

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(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to a nurse aide registry is KRS 216.865, 194.030(12)(b), 42 CFR 483.75 and 42 CFR 483.150-.158.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend the hearings provisions of 906 KAR 1:100 to conform with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide for a nurse aide registry including a hearings and appeals procedure for nurse aides that the Cabinet finds reason to include on the abuse registry.

(d) The benefits expected from this proposed administrative regulation are that the Cabinet will be in compliance with the requirements of KRS Chapter 13B for administrative hearings.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 13B.005 to 13B.170, 216.865, 194.030(12)(b), 42 CFR 483.75 and 42 CFR 483.150-.158.

Department for Medicaid Services

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:002**, Definitions.

(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 January 30, 1996 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 January 30, 1996 the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings and to show revisions to the definitions of words and phrases.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth definitions for words and phrases used by the cabinet in regulations pertaining to the provision of medical assistance.

(d) The benefits expected from administrative regulation are: The regulation will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:004**, Resource and income standard of medically needy.

(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 January 30, 1996 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.

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(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 January 30, 1996 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 income and resource standards of the medically needy is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

(d) The benefits expected from administrative regulation are: The regulations will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:011**, Technical eligibility requirements.

(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 January 30, 1996 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 January 30, 1996 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 technical eligibility requirements is KRS 205.520

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the technical eligibility requirements of the Medicaid Program.

(d) The benefits expected from administrative regulation are: The regulation will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:012**, Inpatient hospital 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 January 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort,

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Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to January 30, 1996 the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to inpatient hospital services is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to inpatient hospital services for which payment shall be made by the Medicaid Program on behalf of both categorically needy and medically needy beneficiaries.

(d) The benefits expected from administrative regulation are: The regulation will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:016**, Psychiatric hospital 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 January 30, 1996 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 January 30, 1996 the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a psychiatric hospital services is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to services in psychiatric hospitals for which payment shall be made by the Medicaid Program on behalf of both categorically needy and medically needy beneficiaries.

(d) The benefits expected from administrative regulation are: The regulation will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

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

- (1) **907 KAR 1:022**, Nursing facility and intermediate care facility for the mentally retarded 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 January 30, 1996 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 January 30, 1996 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 nursing facility and intermediate care facility for the mentally retarded services is KRS 205.520.
- (b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payments shall be made by the Medicaid Program in behalf of both the categorically needy and medically needy.
- (d) The benefits expected from administrative regulation are: The regulations will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: November 20, 1995
Cabinet for Human Resources
Department for Medicaid Services

- (1) **907 KAR 1:025**, Payments for nursing facility and intermediate care facility for the mentally retarded 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 January 30, 1996, 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 January 30, 1996 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, 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 payments for nursing facility and intermediate care facility for the mentally retarded services.
- (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025, Payments

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for nursing facility and intermediate care facility for the mentally retarded services to provide for additional ventilator facility beds.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable by the cabinet for nursing facility services and intermediate care facility for the mentally retarded services.

(d) The benefits expected from administrative regulation are: that additional ventilator facility beds will be available for treatment of ventilator dependent individuals.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:160**, Home and community based services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996 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 home and community based services is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the coverage provisions applicable to home and community based services provided to eligible recipients as an alternative to nursing facility services.

(d) The benefits expected from administrative regulation are: The regulations will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:320**, Kentucky patient access and care systems.

(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 January 30, 1996 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 January 30, 1996 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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky patient access and care system is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the terms and conditions under which the cabinet shall provide medical assistance pursuant to a waiver granted by the Secretary, United States Department of Health and Human Services providing for a physician primary care case management system.

(d) The benefits expected from administrative regulation are: The regulations will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:460**, Coverage and payments for preadmission screening and annual resident review.

(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 January 30, 1996 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 January 30, 1996 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 coverage and payments for preadmission screening and annual resident review is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the coverage and payment provisions for preadmission screening and annual resident review.

(d) The benefits expected from administrative regulation are: The regulations will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:505**, Psychiatric residential treatment facility services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996 the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to psychiatric residential treatment facility (PRTF) services is KRS 205.520.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:505, to incorporate by reference a revised Psychiatric Residential Treatment Facility (PRTF) Manual. The PRTF manual is being revised to correspond with the changes being made to the companion payment regulation 907 KAR 1:510 effective November 1, 1995 which shows an increase in reimbursement to PRTFs from \$225 to \$230 per diem with the rate then to be adjusted upward each biennium by 2.22 percent. The Cabinet also intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth coverage provisions for psychiatric residential treatment facility services.

(d) The benefits expected from administrative regulation are: The regulation will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:560**, Medicaid hearings and appeals.

(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 January 30, 1996 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 January 30, 1996 the public hearing will be canceled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, 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 hearings and appeals are KRS 205.520, 42 CFR 431.220 through 431.246.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation to address hearings and appeals for the Medicaid eligibility process. The subject matter was previously included in a Department for Social Insurance regulation (904 KAR 2:055). CHR will review legal fees established pursuant to KRS 205.237. The Cabinet intends to promulgate the regulation in accordance with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth procedures for applicant and recipient hearings and appeals.

(d) The benefits expected from administrative regulation are: The creation of an individual subject matter Medicaid regulation from material contained in 904 KAR 2:055 allows the Department for Medicaid Services to have its own regulation and will clarify agency policy. In addition, the regulation will be promulgated in a manner which is compliant with KRS Chapter 13 governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:671**, Conditions of Medicaid provider participation; enrollment, documentation of service, disclosure, claims processing, withholding overpayments, appeals process and sanctions.

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

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1996 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 January 30, 1996 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 provider participation is KRS 205.520.

(b) The Cabinet intends to amend the hearing provisions of this regulation for the purpose of conforming with the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to Medicaid provider participation.

(d) The benefits expected from administrative regulation are: The regulations will be promulgated in a manner which is compliant with KRS Chapter 13B governing administrative hearings.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

Division of Program Development and Budget

(1) **907 KAR 1:675.** Program integrity.

(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 January 30, 1996 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 January 30, 1996, 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, or Division of Program Development and Budget, 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 program integrity is KRS 194.050, 42 CFR 455.12; 455.13; 455.16(c)(4); KRS 205.8453; 205.6318.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate is 907 KAR 1:675. It will implement an administrative hearing procedure based on directives from KRS 205.8453, to institute other measures necessary or useful to control fraud and abuse. The provisions of this administrative regulation provides due process prior to disqualification of a responsible party from the Medicaid Program or prior to requesting repayment of Medicaid benefits paid on behalf of a responsible party. This emergency administrative regulation implements an administrative disqualification hearing procedure to be used by the Medicaid Program in making a determination than an intentional program violation was committed by the adult responsible party. This determination process affords an appellant due process before determination is made. The action taken under the administrative regulation shall not relieve the cabinet from pursuing criminal action through the Attorney General's Office or the Kentucky State Police.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The administrative regulation institutes an

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administrative process which provides due process prior to disqualification or request for repayment of Medicaid benefits paid on behalf of a responsible party.

(d) The benefits expected from administrative regulation are: The benefits expected is the implementation of a fraud and abuse control in the Medicaid Program which could save money for the citizens of the Commonwealth of Kentucky by collecting repayments by those recipients, of which some were not eligible to receive Medicaid benefits as determined through the administrative hearing process.

Date: December 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

Division of Program Development and Budget

(1) **907 KAR 1:677**, Medicaid recipient lock-in.

(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 January 30, 1996 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 January 30, 1996, 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, or Division of Program Development and Budget, 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 program integrity is KRS 194.050, 205.520; 205.6318; 205.8453; 42 USC 1396(a); 1396(a)(2).

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate is 907 KAR 1:677. It will implement an administrative hearing procedure based on directives from KRS 205.8453(4) and 205.6318(6). Based on KRS 205.6318(6), the cabinet reviewed the efficiency and effectiveness of the current fraud and abuse detection and investigation process and determined the current lock-in system for recipients identified as misutilizers was inadequate in controlling or educating recipients who may have unknowingly abused the program. This administrative regulation sets forth program integrity provisions through the lock-in program for Medicaid recipients. This administrative regulation sets forth requirements for having one physician responsible for directing the medical care of those recipients determined to have misutilized the Medicaid Program. Recipients identified for lock-in shall be afforded the opportunity for a hearing prior to a final determination of lock-in status. The primary physician, as chosen by the department, shall be paid a case management fee of \$10 a month per recipient. Once a Medicaid recipient is placed in lock-in status, a referral shall be required from the primary physician prior to Medicaid paying for medical services with the exception of services provided to individuals with an emergency medical condition.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The administrative regulation institutes a lock-in program whereby one physician is assigned to individuals who misutilize the Medicaid Program as directed by KRS 205.8453(4) and 205.6318(6).

(d) The benefits expected from administrative regulation are: The benefits expected is the implementation of a fraud and abuse control in the Medicaid Program which could save money for the citizens of the Commonwealth of Kentucky by educating Medicaid recipients of the most cost effective manner to receive medical services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
200 KAR 22:100E

200 KAR 22:100E 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 Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units 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 Social Services can be implemented without delay. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
CRIT LUALLAN, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 22:100E. Comprehensive Employment Manual of the Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units for use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)
STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)
EFFECTIVE: November 30, 1995

NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. Pursuant to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the 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 Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Cabinet for Human Resources, Department for Social Services, Division of Family Services 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 Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units are set out

in the "Employee Handbook of the Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units for Use in the Pilot Personnel Program" revised August 1995, ("Employee Handbook") is incorporated by reference.

(2) The "Employee Handbook" may be inspected, copied, or obtained from Barbara Carter, Jefferson District Department for Social Services Office, L&N Building - 7 West, 908 West Broadway, Louisville, Kentucky 40203, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLAN, Secretary

APPROVED BY AGENCY: November 28, 1995

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

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt

(1) Type and number of entities affected: This regulation will affect all employees in the Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units 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 Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units 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

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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? (Explain why tiering was or was not used). Tiering was not applied. This regulation only applies to employees in the Cabinet for Human Resources, Department for Social Services, Division of Family Services, Jefferson District CPS Ongoing Services and Intake Units who are participating in the Pilot Personnel Program.

STATEMENT OF EMERGENCY 200 KAR 22:110E

200 KAR 22:110E 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 Person-

nel 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 Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations, 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 Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations 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 22:110E. Comprehensive Employment Manual of the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations for Use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)

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

EFFECTIVE: December 11, 1995

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

Section 1. Comprehensive Employment Manual. The Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations 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 Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations are set out in the "Employee Handbook of the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations for Use in the Pilot Personnel Program" revised August 1995, ("Employee Handbook") is incorporated by reference.

(2) The "Employee Handbook" may be inspected, copied, or obtained from the Project Coordinator for the Pilot Personnel Program, Courtney Carter, Assistant Director, Kentucky Revenue

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Cabinet, Department of Administrative Services, Division of Revenue Operations, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: December 8, 1995

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

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Assistant Director

(1) Type and number of entities affected: This regulation will affect all employees in the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations who are participating in the Pilot Personnel Program.

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

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

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

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

1. First year following implementation: Pursuant to KRS 18A.430(1)(a), pilot programs are already required to develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit. This regulation merely promulgates the employment manual of the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations 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? (Explain why tiering was or was not used). Tiering was not applied. This regulation only applies to employees in the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations who are participating in the Pilot Personnel Program.

STATEMENT OF EMERGENCY

301 KAR 5:020E

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

BRERETON C. JONES, Governor

C. THOMAS BENNETT, Commissioner

TOURISM CABINET

Department of Fish and Wildlife Resources

301 KAR 5:020E. License agent requirements and responsibilities.

RELATES TO: KRS 150.195, 150.990

STATUTORY AUTHORITY: KRS 150.195

EFFECTIVE: December 11, 1995

NECESSITY AND FUNCTION: To specify requirements for issuing licenses and electronically reporting license sale data and

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license revenue; to detail the procedures for suspending or revoking license agent status, and to specify the methods for appealing a suspension or revocation of agent status. This administrative regulation also repeals 301 KAR 3:025, which it replaces.

Section 1. Issuing Licenses. (1) License agents shall not issue licenses to persons who do not provide the agent with:

- (a) Their date of birth; and
- (b) An identification number, which shall be:
 1. A driver's license number;
 2. A state identification card number;
 3. A Social Security number; or
 4. The number from an identification form printed by the POS device.

(2) License agents shall not issue junior hunting licenses unless the parent or guardian of the license recipient signs the license at the time of purchase.

(3) License agents shall not issue Peabody or Cyprus/AMAX-Robinson Forest user permits to persons who do not sign the liability waivers required by 301 KAR 4:100 or 301 KAR 4:200.

Section 2. Agent Commission and Depositing of Funds. (1) The agent shall retain as a commission:

- (a) Forty (40) cents for each Peabody or Cyprus/AMAX-Robinson Forest permit issued pursuant to 301 KAR 4:100 or 301 KAR 4:200.
 - (b) Twenty-five (25) cents each for other transactions.
- (2) Agents shall promptly deposit transaction fees, less the commissions described in subsection (1) of this section, into the bank accounts required by 301 KAR 5:010.

Section 3. Uploading License Sale Information. (1) The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.

- (2) License agents shall:
 - (a) Connect their POS devices to a telephone line on the date of the scheduled upload;
 - (b) Leave the POS device connected to the telephone line until the upload has been completed;
 - (c) Retain the receipts printed with each transaction until after the information about that transaction has been successfully uploaded; and
 - (d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.

Section 4. Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent a schedule of dates when electronic fund transfers from his bank account will be initiated.

(2) At the close of banking hours on the day of the scheduled electronic fund transfer, agents shall have sufficient funds in their accounts to cover the amount of the transfer.

Section 5. Voiding licenses. (1) License agents may void a license if:

- (a) The license does not print correctly; or
 - (b) After the license is printed, the purchaser:
 1. Discovers that he was issued an incorrect license;
 2. Will not pay for the license; or
 3. Otherwise refuses to accept the license.
- (2) Agents shall retain voided licenses and return them to the department as stipulated in Section 6 of this administrative regulation.

Section 6. Materials Retained and Returned to the Department.

- (1) License agents shall retain:
 - (a) Voided licenses;
 - (b) The completed identification forms required by 301 KAR 5:030;

(c) The signed waiver of liability forms required by 301 KAR 4:100 and 301 KAR 4:200,

(d) Ruined or unusable license stock; and

(e) Discarded printer ribbons.

(2) License agents shall return the materials listed in this section to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for voided licenses not returned as stipulated in subsection (2) of this section, and shall not issue credit for licenses returned later than (30) days after the upload in which the void was reported.

Section 7. Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, the department shall suspend for one (1) year an agent who twice in a twelve (12) month period:

- (a) Causes an electronic fund transfer failure; or
- (b) Violates a provision of:
 1. The agent agreement;
 2. KRS 150.195; or
 3. The administrative regulations adopted pursuant to KRS 150.195.
- (2) The department may permanently revoke the agent status of an agent who:
 - (a) Commits for the second time an offense for which he has been previously suspended;
 - (b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;
 - (c) Fails to notify the department prior to closing his agent bank account;
 - (d) Closes his business seasonally without notifying the department and settling his account;
 - (e) Knowingly issues a license containing false information; or
 - (f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock.
- (3) Before issuing a final order suspending or revoking the status of an agent, the department shall:
 - (a) Notify the agent by registered mail that his status is under review; and
 - (b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.
- (4) Suspensions or revocations shall become effective upon receipt of notification from the department.
- (5) Suspended or revoked agents shall:
 - (a) Surrender upon demand the POS devices and license stock in their possession to an authorized agent of the department;
 - (b) Allow the department access to financial records dealing with license sales; and
 - (c) Immediately pay all funds owed to the department.

Section 8. Appeal of Suspension or Revocation of Agent Status.

(1) Agents who wish to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

(2) Upon receipt of the request for a hearing, the department shall:

- (a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and
- (b) Schedule a hearing to be held either:
 1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or
 2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

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(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) At the hearing, the agent:

(a) May be represented by counsel; and

(b) May present evidence which he feels should be considered, including the calling of witnesses.

(5) The department may present evidence and call witnesses to support the suspension or revocation.

(6) The commission shall make its decision by majority vote.

(7) Agents may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.

(8) After July 15, 1996, the department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B.

Section 10. 301 KAR 3:025, License distribution and reporting, is repealed.

C. THOMAS BENNETT, Commissioner

GREG GINTER, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: December 11, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

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

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

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

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

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

1. First year following implementation: This regulation supports automation of a previously manual hunting and fishing license system. Elimination of the manual system greatly reduces paperwork for both the license agent and the department. There should be no change in cost factors for the agents or the department.

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

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

(a) Direct and indirect costs or savings:

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

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

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

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

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

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Department of Fish and Wildlife agency funds.

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

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

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

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

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

STATEMENT OF EMERGENCY 301 KAR 5:030E

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

BRERETON C. JONES, Governor

C. THOMAS BENNETT, Commissioner

TOURISM CABINET Department of Fish and Wildlife Resources

301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses.

RELATES TO: KRS 150.090, 150.170, 150.175, 150.195, 150.235, 150.990

STATUTORY AUTHORITY: KRS 150.090, 150.195

EFFECTIVE: December 11, 1995

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NECESSITY AND FUNCTION: To specify the information required to purchase a POS license, the information required on the license, and how replacement licenses may be obtained.

Section 1. Information Required to Purchase a POS License. A person buying a POS license shall furnish the license agent the following information:

- (1) The license applicant's date of birth; and
- (2) An identification number, which shall be either:
 - (a) An identification number generated by the POS device; or
 - (b) The license applicant's:
 1. Driver's license number;
 2. State identification card number; or
 3. Social Security number.

(3) To purchase a license using an identification number from the POS device, a person shall provide the full name and complete mailing address of the license applicant to the license agent on a form generated by the POS device.

Section 2. Providing Information on Licenses. (1) Before performing an act authorized by the license, the license holder shall:

- (a) Sign:
 1. The POS license; and
 2. Each tag portion of the deer or turkey permit.
- (b) Provide the following information, legibly in ink or indelible pencil, in the blanks provided on the POS license:
 1. Address, including city, state and zip code;
 2. Eye color;
 3. Hair color;
 4. Sex;
 5. Height; and
 6. Weight.

(2) Licenses not completed as specified in this section shall be invalid.

Section 3. Replacement of Lost or Destroyed Licenses. (1) Persons whose licenses are lost or destroyed may:

- (a) Request a replacement license from the department; or
- (b) Purchase a replacement license and request a refund from the department.

(2) Persons requesting replacement licenses or refunds shall provide the department with:

- (a) Their name and complete mailing address;
- (b) The identification number used to purchase the original license; and either:
 1. A replacement fee of three (3) dollars; or
 2. The license number of the license they bought to replace the lost or destroyed license.

(3) If the department can verify the purchase of the original license, it shall:

- (a) Void the original license, and, as appropriate;
 - (b) Issue a replacement license; or
 - (c) Issue a refund check for the amount of the license, less a three (3) dollar replacement fee.
- (4) A person shall not use, or present to a conservation officer or other peace officer, a license voided by the issuance of a replacement.

(5) The department shall not refund license replacement fees.

Section 4. Duplicate License Refunds. Persons may obtain refunds for duplicate POS licenses:

- (1) From the license agent who completed the transaction, if:
 - (a) The request is made on the same day the license was issued; and
 - (b) The original license is surrendered to the license agent; or
- (2) By furnishing the department with:
 - (a) The duplicate license;

(b) The name and mailing address of the person requesting the refund;

(c) The license number of the original license; and

(d) An explanation of the reason for the refund request.

(3) Upon receipt of the refund request and duplicate license, and subsequent verification of the original purchase, the department shall issue a refund.

Section 5. Buying Licenses for Another. A person purchasing a POS license for another person shall provide the license agent with the information about the person for whom the license is being purchased as required in Section 1 of this administrative regulation.

C. THOMAS BENNETT, Commissioner

GREG GINTER, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: December 11, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: The approximately one million persons who purchase hunting or fishing licenses and permits.

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

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

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

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

1. First year following implementation: There are no costs associated with paperwork requirements for this administrative regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will impose no additional costs or create additional savings.

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

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

(b) Reporting and paperwork requirements: This administrative regulation requires that persons purchasing a license or permit from the department sign the license and provide personal information on the license. It also requires that persons who do not provide a driver's license or Social Security number shall complete a form before purchasing a license.

(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: Game and Fish 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: This administrative regulation will be implemented statewide.

(b) Kentucky: No public comments received. This administrative regulation should have no economic impacts or affect economic

activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation requires license buyers to provide information on the license. The alternative of having the license agent collect and key in this information was rejected because it would be too time consuming and would place an additional burden on the agent. Not requiring this information on the license was rejected because the absences of this information would make it difficult for law enforcement officers to identify license holders.

(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.

(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: No detrimental effect.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

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

STATEMENT OF EMERGENCY 702 KAR 3:270E

This emergency administrative regulation, as approved by the Kentucky Board of Education, provides guidelines for the calculations to distribute funds to local school districts through the program to Support Education Excellence in Kentucky (SEEK). The proposed amendment causes prior year property assessments rather than current year property assessment to be used in the calculation. This emergency administrative regulation is necessary for the Kentucky Department of Education to be able to distribute excess SEEK funds to local school districts. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

PAUL E. PATTON, Governor
JOSEPH W. KELLY, Chairman

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

702 KAR 3:270E. SEEK funding formula.

RELATES TO: KRS 156.035, 156.070, 157.360, 157.410, 157.440, 157.620, 160.476, 160.477

STATUTORY AUTHORITY: KRS 156.070, 156.160

EFFECTIVE: December 15, 1995

NECESSITY AND FUNCTION: KRS 156.035 and 156.070 set forth the Kentucky Board of ~~State Board for Elementary and Secondary~~ Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. KRS 156.160 gives the ~~Kentucky Board of State Board for~~

~~Elementary and Secondary~~ Education the authority to promulgate administrative regulations deemed necessary for the preparation of budgets and salary schedules for the school districts under its management and control. This administrative regulation is necessary to provide guidelines for the calculations to distribute the funds to school districts through the program to Support Education Excellence in Kentucky (SEEK).

Section 1. Definitions. (1) "At-risk student amount" means fifteen (15) percent of the per pupil guaranteed base funding provided pursuant to KRS 157.360(1) times the average of the highest number of approved applications for free meals in each of the eight (8) months (September through May excluding December) of the prior fiscal year and times the number of state agency children served pursuant to KRS 158.135.

(2) "Calculated base SEEK funding" means the guaranteed base funding provided in the biennial budget pursuant to KRS 157.360(1) plus the add-on components of the SEEK calculation including at-risk, home and hospital, exceptional children and transportation per KRS 157.360(2).

(3) "Collection rate" means the tax receipts collected for the prior year divided by the maximum revenue collectible. The maximum revenue collectible shall be the prior year's permissive tax revenue plus the levied rates per \$100 of assessed value for real and tangible property and motor vehicles times the prior year assessment of real and tangible property and motor vehicles.

(4) "Debt service outstanding" means the amount of debt service in excess of eighty (80) percent of the allotment for the capital outlay component of SEEK plus the local revenue generated by the five (5) cent equivalent tax levy required for the Facility Support Program of Kentucky participation per KRS 157.620(1)(a).

(5) "Exceptional child amount" means the December 1 exceptional child count of the preceding fiscal year by exceptionality weighted as follows:

(a) 2.35 times the per pupil base funding per KRS 157.360(1) for students with severe disabilities;

(b) 1.17 times the per pupil base funding per KRS 157.360(1) for students with moderate disabilities; and

(c) .24 times the per pupil base funding per KRS 157.360(1) for students with communications disabilities.

(6) "Growth" means the percent change in the second month average daily attendance times the prior year adjusted average daily attendance.

(7) "Home and hospital instruction amount" means the current year's first semester home and hospital average daily attendance plus the prior year's second semester home and hospital average daily attendance, times the per pupil base funding per KRS 157.360(1), less the allotment for capital outlay as set forth in the Biennial Budget.

(8) "Levied equivalent tax rate" means estimated permissive tax revenue plus the current year's levied real estate tax rate, tangible tax rate and motor vehicle tax rate per \$100 of assessed value times the current year's assessment of real estate, tangible property and motor vehicles times the prior year's collection rate divided by the total current year's property and motor vehicle assessment.

(9) "Release time" means regularly scheduled time missed by students with school district approval.

(10) "Shared time average daily attendance" means the average attendance for nondistrict students who attend public schools on a part-time basis in another district.

(11) "State equalization amount" means 150 percent of the statewide average per pupil property assessment as provided in the biennial budget.

(12) "Tier I revenue" means revenue produced by a school district tax levy which, when equalized by state funds with the state equalization amount per KRS 157.440(1)(a), generates up to the maximum revenue allowable per KRS 157.440(1)(a), fifteen (15) percent above the calculated base SEEK funding.

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(13) "Tier II revenue" means revenue produced by a school district tax levy above the Tier I tax levy which generates no more than the maximum revenue allowable per KRS 157.440(2), thirty (30) percent above the combined calculated base SEEK funding and Tier I revenue.

(14) "Transportation funding" means prior fiscal year calculated transportation costs for students in grades primary through twelve (12) transported by school districts as calculated by the Division of Pupil Transportation, Department of Education, pursuant to KRS 157.370 and adjusted by current year second month growth in transported students.

(15) "Vocational educational deduct" means a deduct factor to be applied against the per pupil guaranteed base funding in those instances where a student spends a portion of the school day at a state-operated vocational center.

Section 2. SEEK Calculation Formula. (1) Required data for the SEEK calculation shall include:

(a) Prior year property assessments from the Department of Property Taxation, Revenue Cabinet provided per KRS 160.470(5);

(b) Tax rates levied by school districts;

(c) Equivalent tax rates based on tax levies;

(d) Home and hospital average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(e) Prior year adjusted average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education (in accordance with subsection (3) calculation below);

(f) The growth factor report from the Pupil Attendance Branch, Division of Finance, Department of Education;

(g) Transportation funding reported by the Division of Pupil Transportation, Department of Education;

(h) The number of at-risk students reported by the Division of School and Community Nutrition, Department of Education;

(i) The number of exceptional students in each disability category as reported by the Division of Exceptional Children Services, Department of Education;

(j) Vocational education average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education; and

(k) The state equalization amount.

(2) Assumptions used in the SEEK calculation shall include:

(a) Equivalent tax rates (ETR) shall be the lower of the ETR levied in the prior odd numbered year per KRS 157.440(1)(a) and the current year;

(b) Adjusted average daily attendance (AADA) plus growth shall be the prior year AADA plus the second month's percent attendance growth times prior year AADA; and

(c) Percentage reduction in the allotments may be made to at-risk student, exceptional child, and home and hospital instruction amounts and to the state portion of Tier I funding and to transportation funding due to appropriations in the biennial budget.

(3) AADA shall be calculated for students in grades primary through twelve (12) as follows:

(a) Aggregate days attendance as reported by local school districts:

1. Divided by the number of school days taught as reported by local school districts;

2. Equals average daily attendance (ADA);

(b) ADA:

1. Plus shared time ADA as reported by local school districts;

2. Minus ADA for noncontract, nonresident students as reported by local school districts;

3. Minus release time as reported by local school districts;

4. Minus one-half (1/2) of the total aggregate kindergarten days attendance as reported by local school districts divided by the number of days taught;

5. Minus ADA for overage students as reported by local school districts;

6. Equals adjusted average daily attendance.

(4) The SEEK calculation shall be determined as follows:

(a) Per pupil guaranteed base funding per KRS 157.360(1):

1. Times prior year AADA plus growth;

2. Plus at-risk student amount;

3. Plus exceptional child amount;

4. Plus home and hospital instruction amount;

5. Plus transportation funding;

6. Equals calculated base SEEK funding;

(b) Calculated base SEEK funding:

1. Minus local effort required per KRS 160.470(12)(a);

2. Equals total state SEEK base;

3. Plus total state Tier I funding (in accordance with subsection (6) of this section calculation below);

4. Minus vocational education deduct amount (in accordance with subsection (7) of this section calculation below);

5. Plus hold harmless provision if provided in the biennial budget;

6. Plus prior year adjustments (if any);

7. Minus pro rata adjustments per KRS 157.430 (if any);

8. Equals state SEEK funding.

(5) The formula for the maximum Tier I equivalent tax rate allowable per KRS 157.440(1)(a) shall be as follows:

(a) Guaranteed base funding per KRS 157.360(1):

1. Plus calculated at-risk, exceptional child, home and hospital and transportation amounts;

2. Times fifteen (15) percent;

3. Divided by the greater of the state equalization amount and the local district per pupil assessment.

(6) State Tier I and Tier II funding formulas.

(a) For local districts which have levied an equivalent tax rate at or above the maximum Tier I equivalent tax rate, the state Tier I funding formula shall be as follows:

1. Total calculated base SEEK funding per KRS 157.360;

a. Times maximum Tier I participation fifteen (15) percent per KRS 157.440(1)(a);

b. Equals total Tier I revenue;

c. Divided by prior year AADA plus growth;

d. Equals total per pupil Tier I revenue;

2. Total per pupil Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.

(b) For local districts which have not levied at or above the maximum Tier I equivalent tax rate per KRS 157.440(1)(a), the state Tier I funding formula shall be as follows:

1. Levied equivalent tax rate:

a. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a) and five (5) cents levy per KRS 157.620(1)(a);

b. Equals levied Tier I equivalent tax rate;

c. Times state equalization amount;

d. Equals per pupil total Tier I revenue;

2. Per pupil total Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.

(c) The Tier II calculation formula shall be as follows: Levied equivalent tax rate:

1. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a), the five (5) cents levy per KRS 157.620(1)(a), and the maximum Tier I equivalent tax rate;

2. Times total district assessment of property and motor vehicles;

3. Equals Tier II local revenue (not subject to state equalization).

(7) The vocational education (voc ed) deduct formula shall be as follows: Total state SEEK base:

(a) Divided by calculated base SEEK funding;

(b) Times per pupil guaranteed base funding per KRS 157.360(1);

(c) Times voc-ed deduct percentage as provided for in the biennial budget;

(d) Equals per pupil deduct amount;

(e) Times voc-ed ADA;

(f) Equals total voc-ed deduct amount.

Section 3. Facilities Support Program of Kentucky (FSPK) Calculation. (1) Data required for the FSPK calculation formula shall include:

(a) Prior year property assessments from the Department of Property Taxation, Revenue Cabinet, per KRS 160.470(5);

(b) Equivalent tax rates based on tax levies from school districts;

(c) Prior year AADA as reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(d) Total annual debt service for school building revenue bonds; and

(e) State equalization amount.

(2) Assumptions used in the FSPK calculation shall include:

(a) No school district shall receive state equalization funds until the full five (5) cent equivalent tax required for participation has been levied;

(b) School districts which have levied a five (5) cent equivalent tax for building purposes per KRS 157.620(1)(a) shall qualify to receive state equalization funding when the district's outstanding debt service as of October 1 of each odd-numbered year is within \$10,000 of the required amount; and

(c) A school district's eligibility for participation in the FSPK program shall be based on prior year AADA. State equalization funds shall be calculated based on prior year AADA plus growth.

(3) The FSPK eligibility calculation shall be as follows: Amount generated by a five (5) cent equivalent tax levy per KRS 157.620(1)(a):

(a) Equals total revenue available for debt service;

(b) Minus total current year debt service (from school district's outstanding school revenue bond issues);

(c) Equals debt service needed for equalization (positive amounts indicate ineligibility for equalization).

(4) Once a school district has been determined eligible for state FSPK funds, the state equalization calculation shall be as follows: Maximum eligibility (state equalization amount times .0005):

(a) Minus local effort (per pupil assessment times .0005);

(b) Equals per pupil state equalization;

(c) Times prior year AADA plus growth;

(d) Times pro rata adjustments due to appropriation in the biennial budget;

(e) Equals prorated state FSPK amount.

WILMER S. CODY, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 15, 1995 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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 geographic 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 individuals or entities regulated by it.

STATEMENT OF EMERGENCY

702 KAR 7:065E

This emergency administrative regulation, as approved by the Kentucky Board of Education, designates the agent to manage high school interscholastic athletics as required by KRS 156.070. The administrative regulation specifies the Kentucky High School Athletic Association (KHSAA) as this agent and sets forth the conditions for management, financial planning, and review requirements for maintaining the designation by the Kentucky Board of Education. Section (4) of this administrative regulation directs the KHSAA to complete an annual review of its bylaws by October 30 of each year. This emergency administrative regulation is necessary for the KHSAA to fulfill the review requirements set forth and to put into effect the 1995-96 KHSAA Handbook, including amended bylaws, as soon as

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possible. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

PAUL E. PATTON, Governor
JOSEPH W. KELLY, Chairman

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

702 KAR 7:065E. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

EFFECTIVE: December 15, 1995

NECESSITY AND FUNCTION: KRS 156.070 gives the Kentucky Board of Education (KBE) ~~[State Board for Elementary and Secondary Education (SBESE)]~~ the management and control of the common schools, including interscholastic athletics therein, and allows the KBE ~~[state board]~~ to designate an agency to manage athletics pursuant to rules approved by the KBE ~~[state board]~~. This administrative regulation designates an agent for high school athletics and sets forth financial planning and review processes for that agent. Also, this administrative regulation adopts the bylaws, procedures and rules of that agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the Kentucky Board of Education's ~~[State Board for Elementary and Secondary Education's]~~ agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate with KHSAA and to compete with the common schools.

Section 2. ~~[Effective July 1, 1994]~~ The KHSAA shall meet the following conditions in order to remain eligible to maintain the designation as the agent to manage interscholastic athletics:

- (1) Accept four (4) at-large members appointed by the Kentucky Board of Education ~~[State Board for Elementary and Secondary Education]~~ to its governing body;
- (2) Sponsor an annual meeting of its member schools;
- (3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;
- (4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
- (5) The governing body shall set goals and objectives and perform a self-assessment and submit them annually to the KBE ~~[SBESE]~~;
- (6) Advise the Department of Education of all legal action brought against the KHSAA;
- (7) Permit Board of Control members to serve a maximum of two (2) four (4) year terms with no region represented for more than eight (8) years;
- (8) Employ the commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;
- (9) Permit the commissioner to employ all other personnel deemed necessary to perform the staff responsibilities;
- (10) Permit the Board of Control to assess fines on member schools;
- (11) Utilize trained independent hearing officers instead of eligibility committees for appeals; and

- (12) Establish a philosophical statement of principles to use as a guide in eligibility cases.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the KBE ~~[SBESE]~~:

- (a) Draft budget for the next two (2) years in November of each year;
 - (b) Annual audit with KHSAA Commissioner's letter addressing any exceptions within thirty (30) days of receipt of the audit; and
 - (c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.
- (2) KHSAA shall submit a strategic plan to KBE ~~[SBESE]~~ by June 1 of each year.
- (3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.
- (4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:
- (a) Athletic appeals;
 - (b) Eligibility rules;
 - (c) Duties of school officials;
 - (d) Contests; and
 - (e) Requirements for officials and coaches.
- (5) KHSAA shall submit to KBE ~~[SBESE]~~ a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of individual(s), grade, school, and the action taken by KHSAA.

Section 4. The bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1995-96 ~~[1994-95]~~ as revised, adopted, and approved on December 6, 1995 ~~[May 3, 1994]~~, are hereby incorporated by reference. This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

WILMER S. CODY, Commissioner
JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 15, 1995 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Randy Kimbrough, Deputy Commissioner

- (1) Type of 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: None
 - (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

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(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 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.

STATEMENT OF EMERGENCY 704 KAR 20:084E

This emergency administrative regulation identifies the test of knowledge specific and the minimum passing score required to satisfy the testing prerequisites for the Professional Certificate for Interdisciplinary Early Childhood Education, Birth to Primary. In addition, this emergency amendment requires that the student teaching experience shall be supervised by a teacher who has a letter certifying eligibility to continue teaching in an interdisciplinary early childhood position, or a teacher holding a master's degree with emphasis in early childhood and three (3) years of teaching experience. The test of knowledge specific has now been developed and validated. Pursuant to KRS 13A.190(1)(a)3, it is necessary to promulgate this emergency administrative regulation, in order to issue the certificate to the teacher candidates who have completed the approved program of preparation and who have successfully completed the testing prerequisites. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation was filed with the Regulations Compiler on December 4, 1995.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board

704 KAR 20:084E. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

EFFECTIVE: December 4, 1995

NECESSITY AND FUNCTION: KRS 161.020 requires 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. Additionally, the statute requires teacher education institutions to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education,

birth to primary; the teacher standards; and the standards for approval of programs leading to such a certificate.

Section 1. Definitions. The following definitions shall apply for purposes of this administrative regulation:

(1) "Interdisciplinary" means a preparation program that includes child development, family studies, early childhood education, and early childhood special education.

(2) "Teacher performance standard" means a set of teaching and managing tasks that an early childhood educator shall be able to demonstrate in early childhood programs. Each teacher standard statement describes the general set of teaching or managing tasks that an early childhood educator shall perform and the contexts for performance of these tasks.

(3) "Cultural diversity" means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socio-economic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

Section 2. (1) The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has completed a bachelor's degree and the approved program of preparation for this certificate as described in Sections 7, 8, and 9 of this administrative regulation at a teacher education institution approved by the Education Professional Standards Board. In addition, the applicant shall complete the written tests and a one (1) year internship as provided in this administrative regulation.

(2)(a) In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least the following minimum passing scores on the tests identified below:

1. The NTE Core Battery tests:

a. Communication skills, 646;

b. General knowledge, 643; and

c. Professional knowledge, 644.

2. ~~Kentucky [Applicants shall successfully complete a] test of [knowledge specific to] interdisciplinary early childhood, 150 [teaching which shall be identified by the Education Professional Standards Board pursuant to KRS 161.030].~~

(b) The tests may be waived for out-of-state teachers who have two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program on at least a half-time basis and whose preparation corresponds to the interdisciplinary early childhood education outlined in this administrative regulation.

(3) Upon successful completion of an approved program of preparation and testing, the Education Professional Standards Board shall issue a statement of eligibility in accordance with KRS 161.030.

(4) The Education Professional Standards Board shall issue the one (1) year certificate for the beginning teacher internship as provided in KRS 161.030 and 704 KAR 20:320 upon applicant's confirmation of employment in a position teaching children from birth to entry into a primary program on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.

(5)(a) The beginning teacher internship may be waived for out-of-state applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program.

(b) The beginning teacher internship may be waived for applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into a primary program on at least a half-time basis in Kentucky while holding one (1) of the following credentials:

1. Baccalaureate or higher degree in child development or early childhood education or early childhood special education;

2. Certification valid for kindergarten; or

3. Special education certification valid for primary grades.

Section 3. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

Section 4. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be valid for teaching children from birth to entry into the primary program. This includes teaching children in kindergarten or other programs for five (5) year old children where these programs are operated separately from the primary program. Persons holding this certificate shall serve as primary developers and implementers of individual programs for children with and without disabilities including individual education plans (IEP's) and individual family service plans (IFSP's) with consultation and support from specialists according to the needs of the child (e.g., speech-language pathologists, occupational and physical therapists, nurses, educators of the hearing impaired or vision impaired, and others).

Section 5. Teachers serving in positions identified in Section 4 of this administrative regulation as early childhood teachers during the 1994-95 school year in districts with approved preschool programs shall be eligible to continue serving in the same position without any additional certification. Upon application to the Education Professional Standards Board, these teachers shall receive letters certifying eligibility.

Section 6. All teacher preparation institutions offering approved programs of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall establish an assessment system to judge the performance of candidates on the teacher performance standards identified for this certificate.

Section 7. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the teacher standards listed in Section 9 of this administrative regulation.

(2) The program shall include a system of continuous assessment to evaluate the candidate's progress and level of attainment on the teacher standards. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts. Candidates shall be evaluated by paper and pencil tests and authentic assessments of performance.

(3) The program of preparation shall ensure that candidates from culturally diverse backgrounds are recruited and retained in the program.

(4) The program of preparation shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the teacher standards with children from culturally diverse backgrounds.

(5) Student teaching experiences shall be supervised by a teacher who has a letter certifying eligibility to continue teaching in an interdisciplinary early childhood position, or a teacher holding a master's degree with emphasis in early childhood and three (3) years of teaching experience.

Section 8. Application for Program Approval. (1) A teacher education institution which proposes to offer a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall make application for

approval to the Education Professional Standards Board. The application for approval shall include a program description which includes the following:

(a) Program outcomes: include teacher standards for interdisciplinary early childhood education.

(b) Program components: provide list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies.

(c) Faculty: provide list of faculty responsible for and involved with the conduct of the specific program and their qualifications.

(d) Students: describe admission and retention policies and procedures that are specific to this program.

(e) Plan for assessment: description of the system of continuous assessment of teacher standards.

(2) Institutions may receive interim program approval for a one (1) year period which may be extended for one (1) additional year while the institution develops the assessments identified in Section 7(2) of this administrative regulation. At the end of the period of interim approval the institution shall apply for full approval to the Education Professional Standards Board.

Section 9. Teacher Standards. (1) Teacher Standard I. The early childhood educator shall design and organize learning environments, experiences, and instruction that address the developmental needs of infants, toddlers, preschool children, and kindergarten children and goals established by KRS 158.6451. The early childhood educator shall develop plans for:

(a) Implementation in a classroom setting;

(b) Implementation in a home or other settings;

(c) Implementation by teaching assistants and other staff in a variety of settings; and

(d) Training teaching assistants, other staff, and parents.

These plans shall include individual family service plans (IFSP's), individual education programs (IEP's), and transition plans for children across disabilities developed in partnership with family members.

(2) Teacher Standard II. The early childhood educator shall create appropriate learning environments for infants, toddlers, preschool children, and kindergarten children that are supportive of developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall provide developmental and learning activities in classroom and home settings, and in other settings, such as other preschools, child care programs, and hospitals. Within these settings, the learning context may include individual child activities, parent-child activities, small groups, and large groups. The early childhood educator shall create appropriate learning environments for children with diverse abilities including children with and without disabilities.

(3) Teacher Standard III. The early childhood educator shall introduce, implement, facilitate, and manage development and learning for infants, toddlers, preschool children, and kindergarten children to promote growth toward developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall implement instruction in classroom and home settings, through itinerant services, and in other settings such as day care, other preschools, and hospitals. The early childhood educator shall implement instruction for young children with diverse abilities including children with and without disabilities.

(4) Teacher Standard IV. The early childhood educator shall assess children's cognitive, emotional, social, communicative, adaptive, and physical development; organize assessment information; and communicate the results appropriate to the purpose of the assessment. Assessment purposes shall include:

(a) Determining learning results;

(b) Developmental screening;

(c) Program planning;

(d) Eligibility for disability services;

(e) Program evaluation;

- (f) Progress on IFSP's and IEP's; and
- (g) Needs for transition to the next educational setting or program.
- (5) Teacher Standard V. The early childhood educator shall reflect on and evaluate teaching and learning situations, learning environments, and programs for infants, toddlers, preschool children, kindergarten children, and their families. This shall include learning situations and programs that are provided in relation to an IFSP or an IEP and by the early childhood educator, a teaching assistant or other staff member, the family, or other caregiver.
- (6) Teacher Standard VI. The early childhood educator shall collaborate and consult with the following to design, implement, and support learning programs for children:
 - (a) Staff in a team effort;
 - (b) Volunteers;
 - (c) Families and primary caregivers;
 - (d) Other educational, child care, health and social services providers in an interagency and interdisciplinary team; and
 - (e) Local, state, and federal agencies.
- (7) Teacher Standard VII. The early childhood educator shall engage in self-evaluation of teaching and management skills and participate in professional development to improve performance. This shall include the following performance areas:
 - (a) Designing and planning developmental and learning activities;
 - (b) Creating learning environments;
 - (c) Implementing and managing activities;
 - (d) Assessing children's learning development;
 - (e) Evaluating learning situations and environmental programs;
- and
- (f) Collaborating with colleagues, parents, and others.
- (8) Teacher Standard VIII. The early childhood educator shall support and promote the self-sufficiency of families as they care for and provide safe, healthy, stimulating, and nurturing environments for young children.

LYDIA COFFEY, Vice-Chair

APPROVED BY AGENCY: November 28, 1995

FILED WITH LRC: December 4, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Ronda Tamme

- (1) Type and number of entities affected: Candidates for this certificate will be required to meet certification standards outlined in this regulation. Institutions of higher education which offer teacher preparation programs leading to early childhood certification will have to meet program approval standards.
- (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 additional cost.
 - (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: Candidates must file appropriate applications and local school district maintain records on personnel qualifications. Institutions of higher education must seek approval for offering certification programs.
 - 2. Second and subsequent years: Same as above.
- (3) Effects on the promulgating administrative body: Office of Teacher Education and Certification must approve certification programs being offered by institutions of higher education and Division of Certification must review applications, issue or deny certificates, and maintain records on all transactions. Individuals teaching in early childhood assignments for the 1994-1995 school

year must apply for approval to be exempt from certification requirements.

- (a) Direct and indirect costs or savings:
 - 1. First year: Costs associated with disseminating program requirements, approving programs, issuing certificates, and maintaining records.
 - 2. Continuing costs or savings: Same as above.
 - 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Office of Teacher Education and Certification must maintain records on all approved programs of preparation, maintain records, and issue certificates.
- (4) Assessment of anticipated effect on state and local revenues: No impact on state and local revenue.
- (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
 - (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 educational well being of public school children.
- (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:
 - (11) TIERING: Is tiering applied? Yes. Certification requirements are uniformly applicable to all individuals, except individuals in early childhood teaching positions for 1994-95 school year who will not be required to meet new certification requirements.

STATEMENT OF EMERGENCY 803 KAR 2:317E

This emergency administrative regulation corrects and amends the administrative regulation in response to questions raised about certain provisions in the rule and clarifies language with regard to intent. The provisions address cut resistant foot protection, first-aid kits, machine operation on slopes, machine shut-down procedures, face protection, ROPS specifications, machine cab enclosures, machine brakes, maintenance and inspection of employee-owned vehicles, and backcuts. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on December 6, 1995.

BRERETON C. JONES, Governor
BILL RIGGS, Chairman

ADMINISTRATIVE REGISTER - 1274

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

803 KAR 2:317E. Special Industries [Adoption of 29 CFR Part 1910.261-.275].

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS [Chapter] 338.051(3), 338.061,
29 CFR 1910

EFFECTIVE: December 6, 1995

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. Incorporation by reference. [The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.261-.275 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:]

(1) The following material is incorporated by reference: [The amendment to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.]

(a) 29 CFR Part 1910.261-.275 revised as of July 1, 1994, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The revisions to 29 CFR 1910.266, "Logging," as published in the Federal Register, Volume 60, Number 174, September 8, 1995, are incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The amendment to 29 CFR 1910.265(d)(2)(iv)(c), "Sawmills," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.]

(3) The amendment to 29 CFR 1910.265, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) 29 CFR 1910.266 is amended, as follows:

(a) The amendments to 29 CFR 1910.266(e)(4)(iii) and (iv), "Pulpwood Logging," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(b) The amendment to 29 CFR 1910.266, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(c) The revisions to 29 CFR 1910.266, "Logging," as published in the Federal Register, Volume 59, Number 196, October 12, 1994, are incorporated by reference.

(5) 29 CFR 1910.268(e), "Telecommunications," shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987, are incorporated by reference.

(6) 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal Register, Volume 59, Number 20, January 31, 1994, is incorporated by reference.

(a) The revisions to 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal

Register, Volume 59, Number 125, June 30, 1994, are incorporated by reference.

(b) The revision to 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(c) The revision to 29 CFR 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal Register, Volume 59, Number 196, October 12, 1994, is incorporated by reference.

(7) 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 52, Number 251, December 31, 1987, is incorporated by reference.

(a) The amendments to 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 53, Number 96, May 18, 1988, are incorporated by reference.

(b) The amendment to 29 CFR 1910.272, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

(8) The amendment to 29 CFR 1910.275, as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

BILL RIGGS, Chairman

APPROVED BY AGENCY: December 6, 1995

FILED WITH LRC: December 6, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry performing logging operations and their employees.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. This proposed change emergency regulation corrects and amends the regulation in response to questions raised about certain provisions in the rule and clarifies language with regard to intent. The provisions covered address cut resistant foot protection, first-aid kits, machine operation on slopes, machine shut-down procedures, face protection, ROPS specifications, machine cab enclosures, machine brakes, maintenance and inspection of employee owned vehicles, and backcuts, and reformat the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little cost effect from this proposed amendment.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amend-

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ments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed 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. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.266, as published in the Federal Register, Volume 60, Number 174, September 8, 1995.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions

impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees performing logging operations, as defined in the regulation.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who perform logging operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY

803 KAR 2:404E

This emergency administrative regulation restores rules regulating fall protection to protect those involved in steel erection activities in the construction industry and amends the regulation to meet KRS Chapter 13A requirements. Specifically, it restores the criteria for safety belts, lifelines, lanyards and safety nets. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on December 6, 1995.

BRERETON C. JONES, Governor
BILL RIGGS, Chairman

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:404E. Personal protective and life saving Equipment [~~Adoption of 29 CFR Part 1926.95-107~~].

RELATES TO: KRS [~~Chapter~~] 338.051, 338.061, 29 CFR 1926
STATUTORY AUTHORITY: KRS [~~Chapter~~] 338.051(3), 338.061,
29 CFR 1926

EFFECTIVE: December 6, 1995 at 4 p.m.

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.~~]

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Section 1. Incorporation by reference. [~~The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.95-.107 of the Code of Federal Regulations, revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~]

(1) Chapter 29, Part 1926.95-.107 of the Code of Federal Regulations, revised as of July 1, 1994, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference. [~~29 CFR 1926.95, "Criteria for Personal Protective Equipment", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.~~]

(2) 29 CFR 1926.104, "Respiratory Protection," Table E-4 is amended, as follows:

<u>Respirator Protection Factors^a</u>				
<u>Type of Respirator</u>	<u>Permitted for Use in Oxygen-deficient Atmosphere</u>	<u>Permitted for Use in Immediately-dangerous- to-life-or-health Atmosphere</u>	<u>Respirator Protection Factor</u>	
			<u>Qualitative Test</u>	<u>Quantitative Test</u>
<u>Particulate-filter, or half- mask face-piece^{b,c}</u>	<u>No</u>	<u>No</u>	<u>10</u>	<u>As measured on each quarter-mask person with maximum of 100.</u>
<u>Vapor- or gas- removing, quarter- mask or half-mask facepiece^c</u>	<u>No</u>	<u>No</u>	<u>10, or maximum use limit of cartridge or canister for vapor or gas, which- ever is less.</u>	<u>As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,^d whichever is less.</u>
<u>Combination particu- late-filter and vapor- or gas- removing, quarter- mask or half-mask facepiece^{b,c}</u>	<u>No</u>	<u>No</u>	<u>10, or maximum use limit or cartridge or canister for vapor or gas, which- ever is less.</u>	<u>As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas,^d whichever is less.</u>
<u>Particulate-filter, full facepiece^b</u>	<u>No</u>	<u>No</u>	<u>100</u>	<u>As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high-efficiency filter is used.</u>
<u>Vapor- or gas- removing, full facepiece</u>	<u>No</u>	<u>No</u>	<u>100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.</u>	<u>As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas,^d whichever is less.</u>
<u>Combination par- ticulate-filter and vapor- or gas-removing, full facepiece^b</u>	<u>No</u>	<u>No</u>	<u>100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.</u>	<u>As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high- efficiency filter is used, or maximum use limit of</u>

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cartridge or canister for
vapor or gas, whichever
is less.

<u>Powered particulate-filter, any respiratory-inlet covering^{b,c,d}</u>	<u>No</u>	<u>No</u> <u>(yes, if escape provisions are provided^d)</u>	<u>N/A</u> <u>No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.</u>	<u>N/A</u>
<u>Powered vapor- or gas-removing, any respiratory-inlet covering^{c,d}</u>	<u>No</u>	<u>No</u> <u>(yes, if escape provisions are provided^d)</u>	<u>N/A</u> <u>No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas^h whichever is less.</u>	<u>N/A</u>
<u>Powered combination particulate-filter and vapor or gas-removing, any respiratory-inlet covering^{b,c,d}</u>	<u>No</u>	<u>No</u> <u>(yes, if escape provisions are provided^d)</u>	<u>N/A</u> <u>No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas^h, whichever is less.</u>	<u>N/A</u>
<u>Airline, demand, quarter-mask or half-mask facepiece, with or without escape provisions^{e,o}</u>	<u>Yes^f</u>	<u>No</u>	<u>10</u>	<u>As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.</u>
<u>Airline, demand, full facepiece, with or without escape provisions^e</u>	<u>Yes^f</u>	<u>No</u>	<u>100</u>	<u>As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values</u>
<u>Airline, continuous flow or pressure demand type, any facepiece, without escape provisions^e</u>	<u>Yes^f</u>	<u>No</u>	<u>N/A</u>	<u>N/A</u> <u>No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.</u>
<u>Airline, continuous flow or pressure demand type, any facepiece, with escape provisions^{e,o}</u>	<u>Yes^g</u>	<u>Yes</u>	<u>N/A</u>	<u>N/A</u> <u>No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus^h.</u>
<u>Airline, continuous flow, helmet, hood, suit without escape provisions</u>	<u>Yes^f</u>	<u>No</u>	<u>N/A</u>	<u>N/A</u> <u>No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.</u>
<u>Airline, continuous flow, helmet, hood,</u>	<u>Yes^g</u>	<u>Yes</u>	<u>N/A</u>	<u>N/A</u> <u>No tests are required due to positive-pressure</u>

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<u>or suit, with escape provisions^e</u>				<u>operation of respirator. The maximum protection factor is 10000 plus^h.</u>
<u>Hose mask, with or without blower, full facepiece</u>	<u>Yes^f</u>	<u>No</u>	<u>10</u>	<u>As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.</u>
<u>Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask facepiece^e</u>	<u>Yes^f</u>	<u>No</u>	<u>10</u>	<u>As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.</u>
<u>Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full face-piece or mouth-piece/nose clamp^e</u>	<u>Yes^f</u> <u>(Yes, if respirator is used for mine rescue and mine recovery operations.)</u>	<u>No</u> <u>(yes, if respirator is used for mine rescue and mine recovery operations.)</u>	<u>100</u>	<u>As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values except when the respirator is used for mine rescue and mine recovery operations.</u>
<u>Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece, or mouth-piece/nose clamp^e</u>	<u>Yes^g</u>	<u>Yes</u>	<u>N/A</u> <u>No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.</u>	<u>N/A</u>
<u>Combination respirators not listed.</u>	<u>The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.</u>			

N/A means not applicable since a respirator-fitting test is not carried out.

^a respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

^b When the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

^c If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or

mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

^d If the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

^e The escape provision shall be an auxiliary self-contained supply of respirable air.

^f "Oxygen deficiency - not immediately dangerous to life or health" - an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

^g "Oxygen deficiency - immediately dangerous to life or health" - an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

^h The protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been

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classified for use in atmospheres having unknown concentrations of contaminants.

The service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

Vapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory-inlet covering are not given, since such respirators are approved only for escape purposes.

[29 CFR 1926.96, "Occupational Foot Protection", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.]

(3) As published in the Federal Register, Volume 60, Number 148, August 2, 1995, the withdrawal of 29 CFR 1926.104 is canceled. [29 CFR 1926.97, "Protective Clothing for Fire Brigades", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.]

(4) As published in the Federal Register, Volume 60, Number 148, August 2, 1995, the withdrawal of 29 CFR 1926.105 is canceled. [29 CFR 1926.98, "Respiratory Protection for Fire Brigades", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.]

(5) As published in the Federal Register, Volume 60, Number 148, August 2, 1995, the withdrawal of paragraphs (b), (c), and (f) of 29 CFR 1926.107 is canceled. [29 CFR 1926.99, "(Reserved)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.]

(6) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The additions to 29 CFR 1926.102, "Eye and Face Protection", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.]

(7) 29 CFR 1926.103, "Respiratory Protection," Table E 4 is amended as follows:

Respirator Protection Factors*				
Type of Respirator	Permitted for Use in		Respirator Protection Factor	
	Oxygen deficient Atmosphere	Immediately dangerous to life or health Atmosphere [†]	Qualitative Test	Quantitative Test
Particulate filter, or half mask face piece ^{b,c}	No	No	10	As measured on each quarter mask person with maximum of 100.
Vapor or gas removing, quarter mask or half mask face piece ^c	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, which ever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, [†] whichever is less.
Combination particulate filter and vapor or gas removing, quarter mask or half mask face piece ^{b,c}	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, which ever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, [†] whichever is less.
Particulate filter, full face piece ^b	No	No	100	As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high efficiency filter is used.
Vapor or gas removing, full face piece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas, [†] whichever is less.

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Combination particulate filter and vapor or gas removing, full facepiece ^b	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.
Powered particulate filter, any respiratory inlet covering ^{b,c,d}	No	No (yes, if escape provisions are provided ^d)	N/A	N/A
			No tests are required due to positive pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high efficiency filter is used.	
Powered vapor or gas removing, any respiratory inlet covering ^{b,c,d}	No	No (yes, if escape provisions are provided ^d)	N/A	N/A
			No tests are required due to positive pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas ^h whichever is less.	
Powered combination particulate filter and vapor or gas removing, any respiratory inlet covering ^{b,c,d}	No	No (yes, if escape provisions are provided ^d)	N/A	N/A
			No tests are required due to positive pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas ^h , whichever is less.	
Airline, demand, quarter mask or half mask face piece, with or without escape provisions ^{a,c}	Yes ^d	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous to life or health (IDLH) values.
Airline, demand, full facepiece, with or without escape provisions ^a	Yes ^d	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous to life or health (IDLH) values.
Airline, continuous flow or pressure demand type, any facepiece, without escape provisions ^c	Yes ^d	No	N/A	N/A
			No tests are required due to positive pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately dangerous to life or health (IDLH) values.	
Airline, continuous flow or pressure demand type, any facepiece, with escape provisions ^{a,c}	Yes ^d	Yes	N/A	N/A
			No tests are required due to positive pressure operation of respirator. The maximum protection factor is 10000 plus ^b .	
Airline, continuous flow, helmet, hood, suit without escape	Yes ^d	No	N/A	N/A
			No tests are required due to positive pressure operation of respirator. The protection factor	

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provisions				provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately dangerous to life or health (IDLH) values.
Airline, continuous flow, helmet, hood, or suit, with escape provisions*	Yes*	Yes	N/A	N/A
				No tests are required due to positive pressure operation of respirator. The maximum protection factor is 10000 plus ^b .
Hose mask, with or without blower, full facopiece	Yes ^d	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous to life or health (IDLH) values.
Self contained breathing apparatus, demand type open circuit or negative pressure type closed circuit, quarter mask or half mask face piece*	Yes ^d	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous to life or health (IDLH) values.
Self contained breathing apparatus, demand type open circuit or negative pressure type closed circuit, full face piece or mouth piece/nose clamp*	Yes ^d	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous to life or health (IDLH) values except when the respirator is used for mine rescue and mine recovery operations.
	(Yes, if respirator is used for mine rescue and mine recovery operations.)	(yes, if respirator is used for mine rescue and mine recovery operations.)		
Self contained breathing apparatus, pressure demand type open circuit or positive pressure type closed circuit, quarter mask or half mask facopiece, full facopiece, or mouth piece/nose clamp*	Yes*	Yes	N/A	N/A
				No tests are required due to positive pressure operation of respirator. The maximum protection factor is 10000 plus.
Combination respirators not listed.	The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.			

N/A means not applicable since a respirator fitting test is not carried out.

* respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air purifying respirators shall be considered in determining protection factors.

^b When the respirator is used for protection against airborne particulate matter having a permissible time weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high efficiency filter(e).

* If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter mask or half mask facopiece or mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facopiece.

^d If the powered air purifying respirator is equipped with a

facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

*The escape provision shall be an auxiliary self-contained supply of respirable air.

¹"Oxygen deficiency—not immediately dangerous to life or health"—an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

*"Oxygen deficiency—immediately dangerous to life or health"—an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

^bThe protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

¹The service life of a vapor or gas removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

^tVapor and gas removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying type respirators equipped with a mouthpiece/nose clamp form of respiratory inlet covering are not given, since such respirators are approved only for escape purposes.

(8) The revision to 29 CFR 1926.104, "Safety Belts, Lifelines, and Lanyards," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(9) The revision to 29 CFR 1926.105, "Safety Nets," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(10) The revision to 29 CFR 1926.107, "Definitions Applicable to this Subpart," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

BILL RIGGS, Chairman

APPROVED BY AGENCY: December 6, 1995

FILED WITH LRC: December 6, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. This proposed regulation restores rules regulating fall protection for those involved in steel erection activities in the construction industry and amends the regulation to meet KRS Chapter 13A requirements. Specifically, it restores the criteria for safety belts, lifelines, lanyards and safety nets.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little cost effect from these proposed amendments.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

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(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulations, 29 CFR 1926, Subpart E - Personal Protective and Life Saving Equipment, as published in the Federal Register, Volume 60, Number 148, August 2, 1995.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees performing construction activity.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who perform construction operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY

803 KAR 2:412E

This emergency regulation clarifies that this administrative regulation does not cover those involved in steel erection activities in the construction industry, but that such coverage is granted in other administrative regulations, and amends the administrative regulation to meet KRS Chapter 13A requirements. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency

administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on December 6, 1995.

BRERETON C. JONES, Governor
BILL RIGGS, Chairman

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:412E. Fall protection [~~Adoption of 29 CFR Part 1926.500-502~~].

RELATES TO: KRS [~~Chapter~~] 338.051, 338.061, 29 CFR 1926.500-503

STATUTORY AUTHORITY: KRS [~~Chapter~~] 338.051(3), 338.061, 29 CFR 1926.500-503

EFFECTIVE: December 6, 1995

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.~~]

Section 1. Incorporation by Reference. [~~The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.500-503 revised as of August 9, 1994, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration. These standards are hereby incorporated by reference.~~]

(1) 29 CFR Part 1926.500-502 revised as of July 1, 1994, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration is incorporated by reference. [29 CFR 1926.500 is amended, as follows:]

(a) The revisions to 29 CFR 1926.500, "Scope, Application, and Definitions Applicable to this Subpart," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference. [Revision to 29 CFR 1926.500, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, is incorporated by reference.]

(b) The revisions to 29 CFR 1926.500, "Scope, Application, and Definitions Applicable to this Subpart," as published in the Federal Register, Volume 60, Number 148, August 2, 1995, are incorporated by reference.

(c) The revisions to 29 CFR 1926.501, "Duty to Have Fall Protection," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(d) The revisions to 29 CFR 1926.502, "Fall Protection Systems Criteria and Practices," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(e) The addition of 29 CFR 1926.503, "Training Requirements," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.

(2) This material may be inspected and copied at the Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [29 CFR 1926.501 is amended, as follows:]

(a) Revision to 29 CFR 1926.501, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, is incorporated

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ed by reference.

~~(b) The revisions to 29 CFR 1926.501, "Duty to Have Fall Protection," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.~~

~~(3) The revisions to 29 CFR 1926.502, "Fall Protection Systems Criteria and Practices," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.~~

~~(4) The addition of 29 CFR 1926.503, "Training Requirements," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by reference.~~

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]~~

BILL RIGGS, Chairman

APPROVED BY AGENCY: December 6, 1995

FILED WITH LRC: December 6, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. This proposed clarifies that this regulation does not cover those involved in steel erection activities in the construction industry, but that such coverage is granted by other regulations, and amends the regulation to meet KRS Chapter 13A requirements.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little cost effect from these proposed amendments.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be

implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed 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. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulations, 29 CFR 1926.500, Scope, Application and Definitions Applicable to this Subpart, as published in the Federal Register, Volume 60, Number 148, August 2, 1995.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees performing construction activity.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who perform construction operations.

4. How does this administrative regulation affect the local

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government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY 904 KAR 2:016E

This emergency administrative regulation is being amended to revise AFDC policy as it relates to dependent care expenses that are incurred as a result of employment. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on October 19, 1995 since this administrative regulation revises the AFDC payment maximums used in determining the amount of the AFDC payment. An emergency amendment is being requested to implement this change as soon as possible based on the justification shown below.

Currently, AFDC recipients who become employed must pay their own dependent care expenses up front. Existing AFDC policy states that AFDC recipients are allowed a dependent care disregard for dependent care expenses that are incurred, in calculating the amount of the AFDC payment, with the understanding that the amount disregarded is to be used to help in paying the dependent care expense. Several problems have been encountered in applying this policy. One problem is that in many cases the amount of the allowable dependent care disregard is not enough to cover the actual expense charged by the child care provider. Another problem is that in some instances providers experience problems in being paid and are then forced to refuse providing care for children of AFDC recipients. As a result, we are proposing to change the existing policy by allowing a direct dependent care payment when certain criteria are met. There will still be instances in which the dependent care disregard must be applied. Allowing direct dependent care payments to employed AFDC recipients is beneficial to the welfare of both AFDC parents and children for various reasons. One benefit is that quality child care providers will be willing to accept and continue caring for children of AFDC recipients. Another benefit is the assurance of ongoing child care which will make AFDC recipients more reliable and responsible employees. This assurance of dependent care will also prevent lost hours due to lack of adequate child care which affect both the employer and the employee. Further, assured child care will reduce the risk of an AFDC recipient losing employment which could result in additional benefit costs to the state and deter recipients from self-sufficiency.

The emergency amendment to revise the AFDC payment maximums is being requested due to legislative action in the 1994 session that requires unexpended appropriations for AFDC benefits in FY 94 and FY 95 to be used to increase AFDC benefit grants by the same percentage for each family size. The cabinet estimates that approximately \$8,851,300 will be available from general funds from FY 94 and FY 95. That amount can be used to match \$20,771,500 in federal funds for a total of \$29,622,800 to apply towards the payment maximum increase. This would be the first payment maximum increase since July 1989.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation will be filed with the Regulations Compiler for the December 15, 1995 filing.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

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

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

RELATES TO: KRS 47.011, 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39), PL 103-66 §13736, 13742, "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT-94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

EFFECTIVE: December 5, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children (AFDC) Program. This administrative regulation sets forth the standards by which the need for and the amount of an Aid to Families with Dependent Children (AFDC) assistance payment is established.

Section 1. Definitions. (1) "Aid to Families with Dependent Children (AFDC)" means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity or unemployment of a parent.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3.

(a) The benefit group shall include:

1. The dependent child;
2. The child's eligible parent; and
3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) ~~[(2)]~~ "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) ~~[(3)]~~ "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

- (a) A grave site;
- (b) Costs to open and close the grave;
- (c) A crypt;
- (d) A mausoleum space;
- (e) A casket;
- (f) A vault;
- (g) An urn; and
- (h) A headstone.

(5) ~~[(4)]~~ "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing AFDC payment. This shall include:

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- (a) Beginning or ending employment;
- (b) Change in employers or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or
- (f) Change in farm cropping arrangements or type of self-employment activities.

(6) ~~[(5)]~~ "Claimant" means the individual responsible for an overpayment.

(7) ~~[(6)]~~ "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(8) ~~[(7)]~~ "Deduction" means an amount subtracted from gross income to determine countable income.

(9) ~~[(8)]~~ "Excluded income" means income that is received but not counted in the gross income test.

(10) ~~[(9)]~~ "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) ~~[(10)]~~ "Full-time school attendance" means a workload of at least:

- (a) The number of hours required by the individual program for participation in and adult basic education ~~[(ABE)]~~ program, a General Educational Development ~~[(GED)]~~ program or a literacy program; or
- (b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time.

(12) ~~[(11)]~~ "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 87 of this administrative regulation.

(13) "Job Opportunities and Basic Skills (JOBS)" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(14) "Job Training Partnership Act Program (JTPA)" means a program that prepares youth and unskilled adults for entry into the labor force. Only those individuals who are certified as eligible for the program can benefit from JTPA funds.

(15) ~~[(12)]~~ "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(16) ~~[(13)]~~ "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

(17) ~~[(14)]~~ "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(18) ~~[(15)]~~ "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(19) ~~[(16)]~~ "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(20) ~~[(17)]~~ "Recoupment" means recovery of overpayments of assistance payments.

(21) ~~[(18)]~~ "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(22) ~~[(19)]~~ "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(23) "Supplemental Security Income (SSI)" means monthly cash

payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

~~[(24)]~~ ~~[(20)]~~ "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

~~[(25)]~~ ~~[(21)]~~ "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (3) of this section:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Equity value up to \$1,500 for one (1) motor vehicle;

(c) Basic household items essential for day-to-day living, including:

1. Furniture;

2. Appliances; and

3. Clothing.

(d) Gift or inheritance not legally available until a later date;

(e) Nonessential item with a value of less than fifty (50) dollars;

(f) All resources of a recipient of ~~supplemental security income~~ ~~[(SSI)]~~ or the state supplementation program ~~[(SSP)]~~ living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption.

(i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit group shall agree to repay AFDC benefits received beginning with the first month of the exemption.

2. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Children's toys and bicycles;

(k) Household pets;

(l) Resources of a child excluded from the AFDC grant;

(m) Resources of an individual not receiving assistance but living in the home including:

1. The stepparent;

2. Parent or legal guardian of a minor parent;

3. The spouse of a nonresponsible specified relative; or

4. The spouse of a minor dependent child;

(n) Amount of AFDC grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.

(p) Funds in an individual retirement account ~~[(IRA)]~~, retirement or

deferred compensation account during the period of unavailability;

(q) Excluded income, as specified in Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during periods of unavailability;

(s) One (1) burial space per AFDC family member;

(t) \$1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to \$12,000 to Aleutians and \$20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;

(x) Earned income tax credit ~~(EITC)~~ payments in the month of receipt and the following month;

(y) Any payment received from the Radiation Exposure Compensation Trust Fund; and

(z) A nonrecurring lump sum ~~[supplemental security income (SSI)]~~ retroactive payment that is made to an AFDC recipient who is not ongoing eligible for SSI, in the month paid and the next following month.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the AFDC applicant or recipient.

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the AFDC applicant or recipient's share is considered available.

(b) For bank accounts which require more than one (1) signature for withdrawals, determine the AFDC applicant or recipient's share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine applicant or recipient's available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the applicant or recipient's share is determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly

held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the applicant or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant or recipient's name has been removed from the resource.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI;

3. Income of a sanctioned individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application.

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the assistance standard set forth in Section 8 [7] of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the benefit standard, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need for the benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump

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sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the benefit group would have received also changes;
2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;
3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;
4. An individual, who is required to be a member of the benefit group, joins the AFDC household during an established ineligibility period; or
5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded and Deductions Income. All gross non-AFDC income received or anticipated to be received by the benefit group, sanctioned individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 6 [5] of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 7 [6] of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) Earnings received by a dependent child from participation in programs under the [Job Training Partnership Act (JTPA)] program for a period not to exceed six (6) months within a given calendar year;

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 8 [7] of this administrative regulation, for households in which a member receives a JTPA stipend;

(g) Value of United States Department of Agriculture [(USDA)] program benefits including:

1. Donated foods;
2. Supplemental food assistance received under 42 USC 1771;
3. Special food service program for children under 42 USC 1775;
4. Nutrition program for the elderly under 42 USC 3001; and
5. The monthly food stamp allotment;
- (h) Reimbursement for transportation in performance of employment duties, if identifiable;

(i) The value of JOBS supportive services payments and self-initiated supportive services payments authorized under 904 KAR 2:017;

(j) Nonemergency medical transportation payments;

(k) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(l) Educational grants, loans, scholarships, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and
2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(m) Highway relocation assistance;

(n) Urban renewal assistance;

(o) Federal disaster assistance and state disaster grants;

(p) Home produce utilized for household consumption;

(q) Housing subsidies received from federal, state or local governments;

(r) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(s) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;

2. Senior health aides;

3. Senior companions;

4. Service Corps of Retired Executives [(SCORE)]; and

5. Active Corps of Executives [(ACE)];

(u) Payments to "Volunteers in Service to America" [(VISTA)] participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(v) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, or adult foster care;

(w) Payments made under the Low Income Home Energy Assistance Program [(LIHEAP)] under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(x) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(y) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(z) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(aa) The principal of a verified loan;

(bb) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(cc) Income of an individual receiving SSI;

(dd) The essential person's portion of the SSI check;

(ee) Income of an individual receiving mandatory or optional state supplementary payments;

(ff) The advance payment or refund of earned income tax credit [(ETC)];

(gg) Payments made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(hh) Child support received in a month for which the AFDC payment is suspended;

(ii) In-kind income;

(jj) Income of a technically ineligible child;

(kk) Payments made from the Agent Orange Settlement Fund;

(ll) AFDC back payments;

(mm) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(nn) Payments made from the Radiation Exposure Compensation Trust Fund;

(oo) Up to \$2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands; and

(pp) Payments made to individuals because of their status as victims of Nazi persecution.

(2) Applicant eligibility test. Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance

for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) On or after November [July] 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving AFDC;

c. A sanctioned individual whose earned income is considered available to the AFDC household;

d. An AFDC case which would otherwise be ineligible for AFDC without the benefit of the disregard for child care; or

e. The month of application for AFDC benefits; and

2. Shall not exceed: [child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense beginning in the second calendar month following the month employment begins not to exceed:]

a. [4-] \$175 per month per individual for full-time employment; or

b. [2-] \$150 per month per individual for part-time employment; or

c. [3-] \$200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. These deductions shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Deductions from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in the employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or

5. The child care arrangement is terminated through no fault of the applicant or recipient; or

6. The available child care does not meet the needs of the child, for example, a disabled child; or

7. The parent is temporarily absent from work on approved educational leave; or

8. The JOBS participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls; or

9. The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section;

(c) Fails to report and increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

Section 5. Direct Child Care Payments. With the exception of those circumstances outlined in Section 4(2)(d) of this administrative regulation, on or after November 1, 1995, child care expenses incurred as a result of employment shall:

(1) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates in administrative regulation 904 KAR 2:017; and

(2) Be authorized upon the receipt of appropriate verification of the cost of care.

Section 6. [5-] Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for The appropriate family size, for:

1. The support of the individual; and

2. Any other person living in the home if:

a. His needs are not taken into consideration in the AFDC eligibility determination; and

b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.

(c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;

(d) Payments for alimony or child support to a person not living in the home by the individual;

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the AFDC unit in the month received, in any subsequent month.

(3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.

(4) Resources. Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 7. [6-] Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

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(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

- (a) Is no longer in existence; or
- (b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;
2. An amount equal to the AFDC assistance standard for the appropriate family size of:
 - a. The sponsor; and
 - b. Other persons living in the household:
 - (i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and
 - (ii) Whose needs are not considered in making a determination of eligibility for AFDC;
3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;
4. Actual payments of alimony or child support paid to nonhousehold members; and
5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less \$1,500.

Section 8. [7.] Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income, as determined by the provisions of Section 8 of this administrative regulation, is subtracted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

Effective <u>December 1, 1995</u> July 1, 1989		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	<u>\$186</u> [462]	\$394
2 persons	<u>\$225</u> [496]	\$460
3 persons	<u>\$262</u> [228]	\$526
4 persons	<u>\$328</u> [285]	\$592
5 persons	<u>\$383</u> [333]	\$658
6 persons	<u>\$432</u> [376]	\$724
7 or more persons	<u>\$482</u> [419]	\$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 9. [8.] Best Estimate. (1) The agency shall compute the

benefit using its best estimate of income which will exist in the payment month.

(2) The following methods shall be used by the agency to calculate a best estimate:

(a) For cases with earned income, other than self-employment earned income:

1. The agency:

- a. Shall not round cents to the nearest dollar before adding or multiplying hourly or daily earnings; but
- b. Shall round cents to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, the agency shall use income from all pay periods in the preceding two (2) calendar months.

3. The agency shall determine a monthly amount by:

- a. Adding gross income from each pay period;
- b. Dividing by the total number of pay periods considered;
- c. Converting the pay period figure to a monthly figure by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the agency shall compute the anticipated monthly income by:

- a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or
- b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and
- c. Converting the resulting pay period figure to a monthly amount by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

(b) For cases with unearned income, other than unearned self-employment income, the agency shall determine a monthly amount by:

1. Not rounding cents to the nearest dollar;
2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;
3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For cases with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, the agency shall prorate the income by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, the agency shall prorate the income by dividing by the number of months the business has been in existence.

3. The agency shall determine profit by:

- a. Rounding the total gross income to the nearest dollar;
- b. Rounding the total amount of allowable expenses to the nearest dollar;
- c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and
- d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for cases with:

1. Earned or unearned income other than self-employment; or
2. Income from a self-employment enterprise which has not been in existence for at least one (1) year;
- (b) At twelve (12) month intervals for cases with a self-employment enterprise which has been in existence for at least one (1) year;
- (c) Whenever the agency becomes aware of a change in

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circumstances; or

(d) To reflect a mass change in the standard of need or maximum payment standard.

Section 10, [9-] AFDC Recoupment. Except for those overpayments in administrative regulation 904 KAR 2:017, the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

- (a) The claimant;
- (b) The overpaid assistance unit;
- (c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or
- (d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

- (a) Repayment by the individual to the cabinet; or
- (b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8 [7] of this administrative regulation; or
- (c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11, [40-] Avoiding an Overpayment. (1) An AFDC recipient may voluntarily return a benefit check to avoid an overpayment if:

- (a) The case is totally ineligible for the month for which the check is issued; and
- (b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the recipient is due a refund as described in Section 12 [44] of this administrative regulation.

Section 12, [44-] Refund. A recipient shall be due a refund in the following situations:

- (1) The agency recoups an amount in excess of the actual overpayment;
- (2) The agency offsets an overpayment and an underpayment and finds a balance owed to the recipient;
- (3) A recipient voluntarily returns an AFDC check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the AFDC check was intended to cover, leaving a balance owed to the recipient.

Section 13, [42-] Correction of Underpayments. The following provisions apply to all AFDC payments:

- (1) The department shall promptly correct an underpayment to:
 - (a) A current AFDC recipient; and
 - (b) One who would be a current recipient if the error causing the underpayment had not occurred.
- (2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.
- (3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a

resource in:

- (a) The month the payment is paid; or
- (b) The next following month.

Section 14, [43-] Material Incorporated by Reference. (1) Forms necessary for the determination of financial eligibility and recovery of overpayments in the AFDC program are incorporated effective December 1, 1993. These forms include:

- (a) PA-30.2, revised 7/85;
- (b) PA-35, revised 2/91;
- (c) PA-36, revised 1/85;
- (d) PA-412, revised 1/91; and
- (e) PA-415, revised 11/89.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MASTEN CHILDERS II, Secretary
JOHN L. CLAYTON, Commissioner

APPROVED BY AGENCY: November 24, 1995

FILED WITH LRC: December 5, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: There are approximately 2,000 AFDC cases that could potentially be eligible for a direct child care payment that currently include earned income with a child care disregard.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after Notice of Intent is published.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after Notice of Intent is published.

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

1. First year following implementation: Recipients would be required to submit monthly verification of the amount of child care expenses incurred while employed in order for direct child care payments to be made.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Benefits costs: We estimate the benefit costs at \$4,304,000. The state portion of IV-A matching funds is 29.88% or \$1,286,035 with the remaining \$3,017,965 coming from federal funds.

Benefit savings: We estimate a total benefit savings of \$1,040,000. The state share of savings would be \$310,752 based on the 29.88% share. The total cost to the state for benefits only would then figure out to \$975,283 after the savings are used to offset the cost.

Administration: The start up administrative costs will include system modifications to allow direct child care payments to be made. Programming costs for this are estimated at \$3,000 to implement the policy change. It is difficult for the cabinet to estimate additional staffing costs for this policy change in terms of whether or not additional staff will be required to complete the monthly workload. If additional staff is not required, overtime may be required to accomplish this process. The agency has adequate funding to cover these additional costs provided they are not exorbitant.

1. First year: See direct or indirect savings or costs.

2. Continuing cost or savings: Continuing costs would not include

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start up system costs.

3. Additional factors increasing or decreasing costs: Additional factors that could increase costs is if the workload becomes too heavy and additional staff are needed to process payments.

(b) Reporting and paperwork requirements: Paperwork requirements will increase in that monthly verification must be sent out and returned in order to make monthly direct child care payments.

(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 Title IV-A funds and state general funds.

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after Notice of Intent is published.

(b) Kentucky: To be determined after Notice of Intent is published.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only other alternative method is the one currently in effect which is paying direct child care for one month only in the month employment begins. While this method helps, it does not resolve the ongoing problem of seamless services which assist in getting individuals off of AFDC and becoming self-sufficient.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendment that changes AFDC policy as it relates to dependent care expenses that are incurred as a result of employment will ensure equity between working clients and those in the JOBS program and will foster a system of seamless service which is beneficial to the welfare of both the AFDC parent and children in those households.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, potential exists.

(c) If detrimental effect would result, explain detrimental effect: With increased emphasis on states to transition welfare recipients to work in order to become self-sufficient, the need for availability of quality child care is imperative. Currently, due to the uncertainty by child care providers that they will be paid for child care services rendered during this transition period, AFDC children are not always accepted into day care programs. This could result in a detrimental effect on children's living environment. Parents who are unable to make up front payments may leave children in potentially abusive situations or with no adult supervision.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendment to this administrative regulation is not a federal mandate but rather is an option available to states as a method of guaranteeing the availability of child care.

2. State compliance standards. An AFDC state plan revision will be made at the end of the appropriate quarter once the change in policy becomes effective.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

STATEMENT OF EMERGENCY

905 KAR 1:360E

This emergency administrative regulation is promulgated to establish a level of care reimbursement system based upon the needs of the child. It will establish four levels of care for child-caring facilities which are consistent with a level of service provided. The function of the administrative regulation shall be to establish procedures whereby each child shall be initially and periodically evaluated to assure classification in the appropriate level of care which shall determine both type of placement and rate of payment for that child. It is necessary to promulgate an emergency regulation to implement this revised system of reimbursement for child-caring facilities as governed by KRS 199.641. This system is necessary on an emergency basis to allow appropriate attention to fiscal controls while maintaining a priority on the individual health, safety and protective service needs of the children in need of out-of-home placement. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES Department for Social Services

905 KAR 1:360E. Private child care levels of care.

RELATES TO: KRS 199.640-199.670, 605.090, 610.110

STATUTORY AUTHORITY: KRS 194.050, 199.641

EFFECTIVE: November 22, 1995

NECESSITY AND FUNCTION: KRS 199.641 authorizes the cabinet to establish the rate of reimbursement for child-caring facilities which is consistent with the level of service provided. This administrative regulation establishes a four (4) level reimbursement system based on the needs of the child with a reimbursement rate for each level. The function of this administrative regulation shall be to establish procedures whereby each child shall be evaluated to assure classification in the appropriate level of care.

Section 1. Definitions. (1) "Commissioner" means the commissioner or designee of the Department for Social Services.

(2) "Department" means the Department for Social Services.

(3) "Gatekeeper" means the department or a service provider under contract responsible for making a clinical determination of the level of care necessary to meet a child's treatment and service needs.

(4) "Referral packet" means the required forms to be submitted to the gatekeeper and private child care providers to determine level of care and placement. The packet contains the following department forms:

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- (a) DSS-886, Private Child Care Client Interagency Referral;
- (b) DSS-886A, Application for Referral to Private Child Care;
- (c) DSS-1292, Levels of Care Scoring Sheet; and, if appropriate,
- (d) DSS-881, Social History Needs Assessment.

Section 2. Levels of Care. The department shall establish a four (4) level reimbursement system based on the needs of a child in care:

(1) Level I children require a routine home environment which provides maintenance, guidance and supervision to meet the needs of the child and ensures the emotional and physical well-being of the child.

(2) Level II children may engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships and require supervision in a structured supportive setting with counseling available from professional or paraprofessional staff, educational support, and services designed to improve developmental or normalized social skills.

(3) Level III children have both physical and emotional needs and may be at moderate risk for causing harm to themselves and others and require a structured supportive setting with therapeutic counseling available by professional staff and physical, environmental, and treatment programs designed to improve social, emotional, and educational adaption behavior.

(4) Level IV children require a highly structured program with twenty-four (24) hour supervision and a specialized setting which can safely and effectively care for severe and chronic medical conditions complicated by behavioral disorders or emotional disturbance.

Section 3. Role of the Gatekeeper. The gatekeeper shall be responsible for:

(1) Assessing each child-caring facility to determine what services are provided;

(2) Evaluating each child to determine classification in the appropriate level of care which shall determine the type of placement and reimbursement rate for that child;

(3) Reevaluating each child within six (6) months, and every three (3) months thereafter, at which time the child may be reassigned to another level of care or recommended for placement outside the level of care system:

(a) If a child is reassigned to a lower level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the lower level shall be effective thirty (30) days from the date of the reassigned level. If the child is placed in another child-caring facility, the rate for the lower level shall be effective on the day the child is placed.

(b) If a child is reassigned to a higher level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the higher level shall be effective the day after the reassigned level is made. If the child is placed in another child-caring facility, the rate shall be effective on the day the child is placed.

(c) If, after the first six (6) months and before the next scheduled utilization review, the child-caring facility determines a child may be transitioned to a lower level of care, the rate for the current assigned level shall remain in effect until the next scheduled utilization review. If the lower level of care is therapeutic foster care, independent living, or other alternative placement, the facility shall notify the department at which time a utilization review may be requested.

(d) If the child-caring facility determines a child is in a crisis situation or is beyond the facility's capacity to provide care, a request for a reevaluation may be made to the gatekeeper prior to the next utilization review:

1. After the reevaluation is completed by a contract gatekeeper, the department shall be notified of the results.

2. If the child caring-facility disagrees with the reevaluation by the contract gatekeeper, the case shall be submitted to the department for additional review.

(4) Monitoring each placement for quality assurance; and

(5) Maintaining an information system for children served which shall include:

- (a) Placement history;
- (b) Facility placement;
- (c) Cost of services;
- (d) Length of treatment; and
- (e) Discharge outcomes.

Section 4. Participating Providers. (1) Participating providers in the levels of care reimbursement plan shall be licensed under 905 KAR 1:300. If providing intensive treatment oriented services, the participating providers shall also comply with Section 8 of 905 KAR 1:300.

(2) The participating provider shall demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for that child and shall include:

(a) Room and board including any activity contributing to housing, food, clothing, school supplies, or personal incidents;

(b) Clinical services directed to the identification and alleviation of disability or distress experienced by a child and which follows specific treatment plans targeted to identified problems; and

(c) Support services providing essential elements of daily living that allow a child to maintain a positive level of functioning.

Section 5. Referral Process. (1) When the family service worker determines a need to place a child with a child-caring facility, a referral packet shall be completed and a copy submitted to the gatekeeper.

(2) The gatekeeper shall determine the appropriate level of care needed, using the DSS-1292, Level of Care Scoring Sheet, and return the completed DSS-886, Private Child Care Client Interagency Referral Form, to the family service worker within three (3) working days of receipt of the referral packet.

(3) Upon notification of the assigned level of care, the family services worker shall forward the referral packet to potential child-caring facilities.

(4) Once a child-caring facility accepts a child for placement, the family service worker shall complete the DSS-114, Schedule of Payment, and on the prearranged date of placement, transport the child to the facility.

(5) On a monthly basis, the child-caring facility shall submit to the contract gatekeeper and family service worker a copy of the child's record or a narrative summary including:

- (a) Information regarding the child's adjustment;
- (b) Services provided to both the child and family;
- (c) Progress made toward returning the child home; and
- (d) Future plans for the child.

Section 6. Appeals. A child-caring facility may appeal a determination made by the gatekeeper in the application of the provisions of this administrative regulation.

(1) A written notice of appeal shall be submitted to the commissioner no later than thirty (30) days after a child-caring facility is notified of a level of care determination. The notice of appeal shall:

- (a) Specify the action being appealed;
- (b) Specify the reasons the child-caring facility believes the level of care determination is unwarranted;
- (c) Include documentation the child-caring facility considers relevant to support the appeal; and
- (d) Specify alternative determinations or actions that may be taken.

(2) The commissioner shall cause the appeal to be reviewed and evaluated and shall issue a written decision including findings of fact and conclusions of the appeal no later than thirty (30) days after receipt of a notice of appeal unless the commissioner determines that a conference with the child-caring facility may result in a mutually satisfactory resolution of the appeal.

(a) If a conference with the child-caring facility is held, it shall be conducted according to the following procedures:

1. The commissioner shall preside over a conference with the child-caring facility.

2. The conference shall be recorded.

3. The child-caring facility or his authorized representative may present oral arguments or documentation which are considered relevant to support the facility's contention regarding the assigned level of care.

4. The department staff and the gatekeeper shall explain the department's decision regarding the assigned level of care.

5. The commissioner may question the participants and may permit questions or discussions among participants if that may contribute to reaching a decision regarding the assigned level of care under dispute.

(b) The commissioner shall issue a written decision on the appeal, including findings of fact and conclusions, no later than thirty (30) days after the conference.

(3) If the child-caring facility disagrees with the commissioner's decision on an appeal, the facility has the right to an administrative hearing in accordance with KRS Chapter 13B.

Section 7. Material Incorporated by Reference. (1) Forms necessary to implement this administrative regulation are herein incorporated by reference:

(a) DSS-114, Schedule of Payment;

(b) DSS-886, Private Child Care Client Interagency Referral Form;

(c) DSS-886A, Application for Referral to Private Child Care;

(d) DSS-881, Social History/Needs Assessment; and

(e) DSS-1292, Level of Care Scoring Sheet.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th floor, 75 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: October 24, 1995

FILED WITH LRC: November 22, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: Private child-caring programs in the Commonwealth of Kentucky providing residential care and treatment for children and youth committed to the Department for Social Services are affected by this regulation. There are 26 organizations operating at least 41 different programs throughout the state. These organizations include private nonprofit, private for-profit, and local government entities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. On a statewide basis the immediate impact should be revenue neutral as the new rates reflect the average of current payment rates at each level of care. The impact on individual programs will vary depending on whether their current rates are higher or lower than level of care reimbursement rates. A Notice of Intent has been filed that may result in additional public comment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. These regulations do not change the licensing standards and will not increase the cost of doing business for agencies that continue to provide the same level of care they are currently providing. Agencies that are interested in enhancing their programs to serve more difficult children at higher payment rates

will experience an increase in cost which should be offset by the higher reimbursement rates for youth requiring more intensive treatment services. A Notice of Intent has been filed that may result in additional public comment.

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

1. First year following implementation: There will be a minimal additional cost involved in sending copies of client progress reports to the gatekeeper as well as to DSS offices. The cost of additional copies to be faxed or mailed should essentially be limited to the cost of paper and transmittal. The reports to be generated are copies of existing reports and will not directly result in new costs.

2. Second and subsequent years: There should not be any additional reporting or paperwork requirements for the second or subsequent years. Once agencies are assured of a specified rate, if they are willing to accept more difficult children, competition among agencies may increase and assist in controlling the escalating cost of private child care.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Expenditures for private child care services have increased from \$12.3 million in FY 90 to \$33.8 million in FY 95. The levels of care system will introduce greater uniformity into the process and should slow the rate of growth. Once agencies are assured of a specified rate, if they are willing to accept more difficult children, competition among agencies may increase and assist in controlling the escalating cost of private child care. The introduction of the gatekeeping function will introduce systematic reviews by an objective third party and should result in greater cost efficiency by reviewing both the level of care provided and the duration of placements. The only direct costs involved are the \$500,000 associated with the cost of the gatekeeper services. Those services are essential to assure uniform application of the levels of care system on a statewide basis. The gatekeeper will also add a utilization review and quality assurance review that has not been available in this service area. Additionally, the gatekeeper will maintain an information system for children served under the contract which will include placement history, facility placement, cost, length of treatment, and discharge outcomes.

2. Continuing costs or savings: Expenditures for private child care services have increased from \$12.3 million in FY 90 to \$33.8 million in FY 95. The levels of care system will introduce greater uniformity into the process and should slow the rate of growth. Once agencies are assured of a specified rate, if they are willing to accept more difficult children, competition among agencies may increase and assist in controlling the escalating cost of private child care. The introduction of the gatekeeping function will introduce systematic reviews by an objective third party and should result in greater cost efficiency by reviewing both the level of care provided and the duration of placements. The only direct costs involved are the \$500,000 associated with the cost of the gatekeeper services. Those services are essential to assure uniform application of the levels of care system on a statewide basis. The gatekeeper will also add a utilization review and quality assurance review that has not been available in this service area. Additionally, the gatekeeper will maintain an information system for children served under the contract which will include placement history, facility placement, cost, length of treatment, and discharge outcomes.

3. Additional factors increasing or decreasing costs: There may be additional costs to the agency depending upon the number of appeals requested by the private child care agencies and the number of requests for an administrative review.

(b) Reporting and paperwork requirements: Family services staff will summarize client information needed for placement decisions on the DSS-1292, level of care scoring sheet. This is the only new form involved, however it will summarize information already gathered and should not add appreciably to cost. A copy of this form will be sent to

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the gatekeeper by fax or overnight mail which again represents a new but negligible cost. This cost will be offset by the information provided by the gatekeeper in the assessment process which will enable staff to more carefully target proposals for services to individual children. The expense now involved in mailing proposals to providers with no vacancies or who do not provide the appropriate level of care may be reduced.

(4) Assessment of anticipated effect on state and local revenues: There should be no immediate affect on state and local revenues. In the long run, implementation of this regulation should assist in controlling the growth in the cost of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation of this administrative regulation is General Fund and Title IV-E.

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

(a) Geographical area in which administrative regulation will be implemented: A Notice of Intent to Promulgate has been filed with this emergency regulation which will provide for public comment.

(b) Kentucky: A Notice of Intent to Promulgate has been filed with this emergency regulation which will provide for public comment.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative one was to continue negotiating special rates individually for each child to be placed which is essentially the current process. The negotiating process has caused significant increases in expenditures and is time consuming and subject to manipulation and external pressures. Use of levels of care combined with the objective third party gatekeeper will assist in controlling the growth in expenditures and assure that all agencies are treated in a uniform manner. Alternative two was to establish one uniform rate for all placements. The range of needs is too broad to support this option. Some children need only a safe environment with minimal supervision in a home-like atmosphere while others need intensive treatment and 24-hour direct supervision to prevent harm to themselves or others. One uniform rate would result in both gross overpayments and underpayments. The use of four levels allows each rate to cover a narrower range of service suited to the needs of the child.

(8) Assessment of expected benefits: The benefits expected from the proposed emergency administrative regulation are:

1. Providing services which are tailored to the individual needs of children by changing from the existing reimbursement system and special contracts to a system that will require reimbursement rates based on the needs of the child.

2. Shifting the focus to providing services geared to agreed upon outcomes which should increase the benefits to children and provide professionals with an objective measure of the success of service delivery;

3. Streamlining the system by removing existing barriers and using a contractor for assigning levels and monitoring placements which will allow a focus on the needs of the children across the entire system.

4. Controlling expenditures by implementing a closer review of the service providers.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The effects on public welfare are the expected benefits for Kentucky's children. The cabinet believes that the implementation of a level of care system which requires that the individual needs of the child determine the level of care should more appropriately meet the needs of the children and more effectively control the cost of care.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statutes, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or government policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation or government policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: The only additional information available is that with the implementation of the levels of care system, the department cannot determine the full affect on individual agencies until all children in the system have had a level of care determination. However, the total amount of expenditures for private child care was used to reflect the average of current payment rates at each level of care.

(11) TIERING: Is tiering applied? No. This regulation was not tiered as it implements a level of care system statewide and is applicable to all private child care agencies contracting with the Department for Social Services.

STATEMENT OF EMERGENCY 907 KAR 1:675E

The Cabinet for Human Resources is authorized by KRS 205.8453 to institute measures necessary to control fraud and abuse. The cabinet, through this administrative regulation, institutes an administrative process which provides due process prior to disqualification or request for repayment of Medicaid benefits paid on behalf of a recipient. This emergency administrative regulation implements an administrative disqualification hearing procedure to be used by the Medicaid Program in making a determination that an intentional program violation was committed by the adult responsible party. This determination process affords an appellant due process before a determination is made. The action taken under the administrative process outlined in this administrative regulation shall not relieve the cabinet from pursuing criminal action through the Attorney General's Office. An emergency administrative regulation is being requested to implement this policy change based on KRS 205.8453 from the 1994 Regular Session of the General Assembly. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation shall be filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

907 KAR 1:675E. Program integrity.

RELATES TO: KRS 205.8453, 42 CFR 455.12, 455.13, 455.16(c)(4)

STATUTORY AUTHORITY: KRS 194.050, 205.6318, 205.8453, 42 CFR 455.12, 455.13, 455.16(c)(4)

EFFECTIVE: December 5, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.8453(4) directs the Cabinet for Human Resources to institute other measures necessary or useful in controlling fraud and abuse. This administrative

regulation institutes an administrative process which provides due process prior to disqualification or request for repayment of Medicaid benefits paid on behalf of a responsible party. Action taken under the administrative process shall not relieve the cabinet from pursuing criminal action through law enforcement officials. This administrative regulation sets forth the provisions relating to enhanced program integrity of the Medicaid Program. This administrative regulation applies to non-SSI responsible parties or SSI recipients who have been provided the opportunity of due process through the administrative hearing, following a period of lock-in status.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services and its designated agents.

(2) "Intentional program violation" means confirmation that a responsible party knowingly made a false or misleading statement, or misrepresented, concealed or withheld a fact or facts or committed a violation of any state or federal law relating to the Medicaid Program. In addition, a financial loss to the department resulted from:

(a) Ineligibility of the recipient after all possible determinations have been made for Medicaid Program eligibility; or

(b) The responsible party knowingly abused the Medicaid Program after full Medicaid benefits were established following a period in lock-in status. Provider abuse shall be handled in accordance with 907 KAR 1:671.

(3) "Lock-in" means the program in which a recipient who has utilized Medicaid services at a frequency or amount that is not medically necessary may be restricted from receiving Medicaid services from anyone other than one (1) physician and one (1) pharmacy except for emergency services furnished to the recipient. A referral shall be required from the "lock-in" physician for other medical services or equipment.

(4) "Penalty" or "penalties" mean an administrative action taken by the department which restricts or revokes a recipient's participation in the Medicaid Program or requires the repayment of the value of the benefits received, or restricts access to or quantities of services, based on receipt of services for which the recipient was not otherwise entitled.

(5) "Responsible party" means an individual who is either:

(a) A parent or legal guardian of a minor child;

(b) A Medicaid recipient;

(c) Spouse of a Medicaid recipient; or

(d) An individual who possesses a power of attorney for the recipient.

Section 2. Preliminary Identification. (1) The department shall notify Medicaid Program recipients of changes in Medicaid policy for which they shall be held liable with respect to an intentional program violation in accordance with the criteria specified in this administrative regulation.

(2) In accordance with KRS 205.8453, the department shall annually, at the time of Medicaid approval or when recertified for Medicaid Program benefits, notify Medicaid recipients in writing of:

(a) Proper use of medical services or supplies; and

(b) How a recipient of Medicaid benefits may access and utilize Medicaid services in the most cost effective manner.

(3) Medicaid recipients shall be given a toll free number to report any allegation of possible fraud or abuse of the Medicaid Program by recipients or providers.

(4) The department shall identify that a possible intentional program violation occurred as defined in Section 1 of this administrative regulation through:

(a) Computer matches;

(b) Collateral contacts;

(c) Hotline referrals;

(d) Quality control reviews; and

(e) Other valid reports or information previously unknown to the department.

(5) The department shall, if information warrants:

(a) Interview the responsible party and request verification of any information previously unknown to the department for the specified period of time that the alleged program loss occurred;

(b) Allow the responsible party the opportunity to review and refute evidence obtained by the department;

(c) Calculate the value of the services rendered based on Medicaid payments made on behalf of the recipient for the time period that the intentional program violation allegedly occurred; and

(d) If the responsible party does not agree with the evidence he reviews, a determination shall be made that the evidence warrants scheduling a disqualification hearing:

1. Provided it has documented evidence indicating that a responsible party appears to have committed an act of intentional program violation, as defined in Section 1 of this administrative regulation; and

2. Regardless of the current eligibility of the recipient.

Section 3. Advance Notice of Disqualification Hearing. (1) The department shall provide written notice in accordance with KRS Chapter 13B to the responsible party suspected of an intentional program violation at least thirty (30) days before the date the administrative disqualification hearing is scheduled.

(2) The advance notice shall indicate an individual or organization who may be available to provide free legal representation.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the responsible party accused of intentional program violation.

(2) If the responsible party and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) If the responsible party fails to attend a disqualification hearing and is determined to have committed an intentional program violation, but a hearing official later determines that the responsible party or representative had good cause, as defined in subsection (4) of this section, for not appearing:

(a) The previous decision shall not remain valid;

(b) The department shall conduct a new administrative disqualification hearing; and

(c) The hearing official who originally ruled on the case may also conduct the new administrative disqualification hearing.

(4) The responsible party shall have ten (10) days after the date of the scheduled hearing to present good cause for failure to appear. Reasons for good cause shall include:

(a) The responsible party was away from home during the entire hearing advance notice time period;

(b) The responsible party is unable to read or to comprehend the hearing notice;

(c) The responsible party moved resulting in inadequate notice;

(d) Serious illness of the responsible party or immediate family member;

(e) The delay was determined to be no fault of the responsible party; or

(f) Failure on the part of the responsible party to receive notification.

(5) A hearing official shall enter a decision for good cause into the record in addition to the date and time of the rescheduled hearing as specified in subsection (3) of this section.

Section 5. Continued Participation in the Medicaid Program while Awaiting a Disqualification Hearing. A pending hearing shall not affect the recipient's right to participate in the Medicaid Program until the hearing official rules that the responsible party committed an intentional program violation and revokes the recipient's eligibility for those individuals currently receiving Medicaid benefits.

Section 6. Hearing Procedures. (1) The department shall conduct administrative disqualification hearings for a responsible party suspected of an intentional program violation in accordance with the requirements of KRS Chapter 13B and 42 CFR Part 431, Subpart E.

(2) If requested by the responsible party, other designated person or its legal counsel, the department shall provide one (1) free copy of the portions of the case file that are relevant to the hearing.

(3) Within ninety (90) days of the date the responsible party is notified in writing that a hearing has been scheduled, the department shall:

- (a) Conduct the hearing;
- (b) Arrive at a decision; and
- (c) Notify the responsible party of the decision.

(4) The responsible party or legal representative shall be entitled to one (1) postponement not to exceed thirty (30) days from the date the administrative disqualification hearing was originally scheduled. The request for postponement shall be made at least ten (10) days in advance of the date of the scheduled hearing.

(5) If the hearing is postponed, the time limits specified in subsection (10) of this section shall be extended for as many days as the hearing is postponed.

(6) The hearing decision shall:

(a) Comply with federal law and regulation and shall be based on the hearing record;

(b) The hearing record shall comply with the requirements of KRS 13B.130; and

1. Be binding on the department in that the department shall bear the burden of proof based on the preponderance of evidence;

2. Summarize the facts of the case;

3. Specify the reasons for the decision; and

4. Identify:

a. The supporting evidence;

b. Kentucky Revised Statutory citations, if applicable;

c. Kentucky administrative regulations; and

d. Corresponding federal law.

(7) The responsible party or legal counsel and the Medicaid caseworker shall each be notified in writing by the department of:

1. The administrative disqualification hearing decision;

2. The reasons for the decision;

3. If a current recipient, the continuance or revocation of the Medicaid benefits for the recipient, and the amount of repayment due to the department as determined by the hearing official; and

4. After notification of a hearing decision which upholds the department's action, the responsible party shall be notified of the right to pursue judicial review of the decision if the department's decision is upheld.

5. If a judicial review results in the administrative disqualification hearing decision being overturned, the Medicaid benefits of the recipient shall be restored to the date of discontinuance and all repayment collected from the responsible person shall be returned.

(8) The hearing record shall be retained:

(a) For a period of three (3) years from the month of origin of each record, for program records; and

(b) For a period of three (3) years from the date of fiscal or administrative closure, for fiscal records and accountable documents.

(9) This hearing record shall be available to the responsible party, designated person or legal counsel during the normal business week, Monday through Friday, excluding state holidays from 8 a.m. through 4:30 p.m. (eastern standard time) for copying and inspection.

(10) One (1) copy of hearing material shall be provided to the responsible party. If additional copies are required, an appropriate fee which approximates cost shall be paid by the responsible party in accordance with KRS 61.872.

Section 7. Exemptions from Disqualifications. (1) Individuals who shall be exempt from disqualification for an intentional program violation include:

(a) Children under eighteen (18) years of age; and

(b) Pregnant women.

(2) Individuals meeting the criteria for extraordinary circumstances, as specified in KRS 205.8455 and 205.8455(5), shall be permitted to participate in the Medicaid Program on a restricted basis, in accordance with Section 13 of this administrative regulation.

Section 8. Penalties for Intentional Program Violations. (1) If the disqualification hearing determines that the recipient committed an intentional program violation, the department shall:

(a) Provide to the recipient a written notice prior to imposing the disqualification; and

(b) Inform the recipient of the period of time for which he shall be disqualified; and

(c) Advise the recipient when the disqualification shall take effect; and

(d) Inform the recipient of the final value of the benefits received, as calculated at the time of the administrative disqualification hearing, which shall be repaid to the department.

(e) Disqualify the recipient from the Medicaid Program, for intentional program violation in accordance with KRS 205.8455, for those persons receiving Medicaid benefits.

(2) If the determination of an intentional program violation is made through either a signature on a disqualification waiver or an administrative disqualification hearing, the department shall refer the case to the appropriate state agency for investigation. At any time that criminal conduct is suspected, cases shall be referred for possible prosecution. In order to facilitate criminal investigative action, the department shall, at the request of the state agency, provide:

(a) Access to, and free copies of, any records or information kept by the department or its contractors;

(b) Computerized data stored by the department or its contractors; and

(c) Access to any information, kept by providers, to which the agency is authorized as specified in Section 3 of 907 KAR 1:671.

(3) If the recipient is no longer receiving Medicaid benefits, the notice shall inform the responsible party that the period of disqualification shall be deferred until the individual:

(a) Reapplies for Medicaid; and

(b) Is determined otherwise eligible for program benefits.

(4) A notice of their rights and eligibility status shall be provided to other Medicaid recipients residing in a household with a responsible party determined to have committed an intentional program violation.

Section 9. Repayment of Medicaid Benefits. (1) A responsible party shall be liable for the repayment of the value of the benefits when a determination is made that an intentional program violation has been committed.

(2) Repayment of the value of benefits shall be accomplished by:

(a) Lump sum payments.

1. If the responsible party states he is financially able to pay the entire amount of the claim at one (1) time, as a cash payment, the department shall collect a lump sum payment; however

2. The responsible party shall not be required to liquidate all of its resources to make this lump sum payment.

(b) Installments.

1. The department shall negotiate a payment schedule with the responsible party for repayment of any amounts of the claim not repaid through a lump sum payment.

2. Payment shall be accepted by the department in regular installments and shall be paid no later than the tenth day of the month.

(c) Civil action for garnishment or liens in a court of competent jurisdiction; or

(d) Estate recovery; or

(e) Tax intercept.

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Section 10. Collecting Claims Against the Responsible Party. The department shall upon receipt of the hearing decision, initiate collection action against the responsible party unless the responsible party is unable to be located or has repaid the value of benefits owed to the department.

Section 11. Consideration of Extraordinary Circumstances during the Eligibility Revocation Period. (1) If a recipient, who is the responsible party for the Medicaid case has his eligibility revoked as a result of an intentional program violation, the remaining family members shall have eligibility determined for potential Medicaid benefits, in accordance with eligibility verification in 907 KAR 1:004, 907 KAR 1:005 and 907 KAR 1:011.

(2) The department may reinstate a recipient whose eligibility has been revoked due to an intentional program violation and has reapplied for benefits under extraordinary circumstances in accordance with KRS 205.8455. An individual who is reinstated into the Medicaid Program shall be placed into the lock-in status.

(3) If a recipient's eligibility has been revoked and then reinstated under extraordinary circumstances as specified in subsection (2) of this section, that person shall remain obligated to serve the period of ineligibility at a future time to be determined by the department.

Section 12. Appeal Rights. (1) No further departmental administrative appeal shall exist after an administrative disqualification hearing finds that an intentional program violation was committed;

(2) The responsible party may seek relief in a court of competent jurisdiction in accordance with KRS 13B.140.

(3) The period of disqualification may be subject to legal stay by:

- (a) A court of competent jurisdiction; or
- (b) Other injunctive remedy.

Section 15. Implementation Date. The provisions of this administrative regulation shall be applicable February 1, 1996.

MASTEN CHILDERS II, Commissioner/Secretary
APPROVED BY AGENCY: December 1, 1995
FILED WITH LRC: December 5, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Masten Childers II, Commissioner

(1) Type and number of entities affected: All Medicaid recipients who are identified through the administrative hearing process as having committed fraud or abuse of the Medicaid Program.

(2) Direct and indirect costs or savings on the: The cost of repayment to the responsible parties would be the value of Medicaid benefits paid on their behalf if the administrative hearing process determines that an intentional program violation was committed by that individual.

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: This will be determined following the Notice of Intent being published.

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

1. First year following implementation: This amendment should not increase or decrease any compliance, reporting or paperwork requirements to those affected.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: This amendment will have an effect on the administrative body in that the number of administrative hearings could increase due to the current process being expanded to include Medicaid recipients. Currently, this process is performed on food stamp cases only. Computer system

changes and notification letters will be required.

(a) Direct and indirect costs or savings: It is difficult for the agency to determine the direct or indirect cost or savings as a result of this administrative regulation. The agency believes that there will be an additional cost to implement the provisions of this administrative regulation through additional hearings being held but should also experience savings through repayments by those responsible parties, of which some were not eligible to receive benefits as determined through the administrative hearing process. The Medicaid agency will be required to forward the federal share of recouped benefits to the Health Care Financing Administration.

(1) First year: See direct and indirect cost or savings.

(2) Continuing costs or savings: See item #1.

(3) Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional reporting and paperwork requirements as a result of this amendment which will include calculations for repayment amounts and paperwork leading to an administrative hearing being conducted, as well as notifications of the procedures outlined.

(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) Geographic area in which administrative regulation will be implemented: To be determined after the Notice of Intent is published.

(b) Kentucky: To be determined after the Notice of Intent is published.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: To ensure that Medicaid benefits are paid on behalf of a recipient who meets both technical and financial eligibility. If such payments are found to be erroneous based on inaccurate information provided to the department or because of overutilization of Medicaid benefits, repayment will be requested and a disqualification imposed until such time as the repayment amount is paid in full.

(b) State whether detrimental effect on environment and public health would result if not implemented: If no action is taken by the agency, there is no effective mechanism to deter a responsible party from providing the agency with all necessary information on which eligibility is determined or from abusing the Medicaid Program through overutilization. In addition, a financial loss may be experienced by the agency due to erroneous payments being made for an ineligible individual and uncontrolled use of Medicaid benefits.

(c) If detrimental effect would result, explain detrimental effect: The detrimental effect would be that an ineligible recipient could have erroneous Medicaid benefits paid on their behalf and continued to be paid on their behalf because there is no administrative process to disqualify or control this individual from overutilization of Medicaid benefits.

(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: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: As stated in the Necessity and Function, only those SSI recipients who go through the administrative hearing process following a period of lock-in will be subject to disqualification procedures. For the most part, the administrative hearing process based on accurate eligibility determinations will be used for a non-SSI recipient.

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(11) TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions 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. The administrative hearing process is not a federal mandate. It is being implemented to comply with state statute.
2. State compliance standards. Provisions of KRS 205.8453.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY 907 KAR 1:677E

KRS 205.8453(4) and 205.6318(6) directs the Cabinet for Human Resources to promulgate administrative regulations to identify misutilization of Medicaid services, to institute other measures necessary or useful in controlling fraud and abuse. Based on KRS 205.6318(6), the cabinet reviewed the efficiency and effectiveness of the current fraud and abuse detection and investigation process and determined the current lock-in system for recipients identified as misutilizers was inadequate in controlling or educating recipients who may have unknowingly abused the program. This administrative regulation sets forth program integrity provisions through a lock-in program for Medicaid recipients. This emergency administrative regulation sets forth requirements for having one physician responsible for directing the medical care of those recipients determined to have misutilized the Medicaid Program. Recipients identified for lock-in shall be afforded the opportunity for a hearing prior to a final determination of lock-in status. The primary physician, as chosen by the department, shall be paid a case management fee of ten dollars a month per recipient. Once a Medicaid recipient is placed in lock-in status, a referral shall be required from the primary physician prior to Medicaid paying for medical services with the exception of services provided to individuals with an emergency medical condition. This emergency administrative regulation is necessary in order to control the loss of both federal and state funds on recipients who misutilize or overutilize the Medicaid Programs. In addition, this administrative regulation implements changes based on KRS 205.8453 from the 1994 Regular Session of the General Assembly.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation shall be filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

**CABINET FOR HUMAN RESOURCES
Department for Medicaid Services**

907 KAR 1:677E. Medicaid recipient lock-in

RELATES TO: KRS 205.8453, 42 CFR 431.54, 42 USC 1396(a),

1396(a)(2)

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.6318, 42 CFR 431.54

EFFECTIVE: December 5, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.8453(4) and 205.6318(6) direct the Cabinet for Human Resources to promulgate administrative regulations to identify misutilization of Medicaid services, to institute other measures necessary or useful in controlling fraud and abuse. Based on KRS 205.6318(6), the cabinet reviewed the efficiency and effectiveness of the current fraud and abuse detection and investigation process and determined the current lock-in system for recipients identified as misutilizers was inadequate in controlling or educating recipients who may have unknowingly abused the program. This administrative regulation sets forth the provisions to enhance program integrity through the lock-in program for Medicaid recipients. This administrative regulation sets forth the Medicaid lock-in provisions relating to recipient overutilization of the Medicaid Program.

Section 1. Definitions. (1) "Department" means The Department for Medicaid Services and its designated agents.

(2) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention may reasonably be expected to result in:

(a) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

1. That there is inadequate time to effect a safe transfer to another hospital before delivery; or

2. That transfer may pose a threat to the health or safety of the woman or the unborn child.

(3) "Immediate grave bodily harm" means the condition that would result from failure to provide emergency medical services for an emergency medical condition.

(4) "Intentional program violation" means confirmation that a responsible party knowingly made a false or misleading statement, or misrepresented, concealed or withheld a fact or facts or committed a violation of any state or federal law relating to the Medicaid Program. In addition, a financial loss to the department resulted from:

(a) Ineligibility of the responsible party after all possible determinations have been made for Medicaid Program eligibility; or

(b) The responsible party knowingly abused the Medicaid Program after full Medicaid benefits were established following a period in lock-in status. Provider abuse shall be handled in accordance with 907 KAR 1:671.

(5) "Lock-in" means the program in which a recipient who has utilized Medicaid services at a frequency or amount that is not medically necessary may be restricted from receiving Medicaid services from anyone other than their one (1) physician and one (1) pharmacy except for emergency services furnished to the recipient. A referral shall be required from the "lock-in" physician for other medical services or equipment.

(6) "Overutilization" means the use of program benefits clearly in excess of practice norms for the treatment of the beneficiary's medical problem or of that actually required for the severity of the beneficiary's medical problem.

(7) "Penalty" or "penalties" mean an administrative action taken by the department which restricts or revokes a recipient's participation

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in the Medicaid Program or requires the repayment of the value of the benefits received, or restricts access to or quantities of services, based on receipt of services for which the responsible party was not otherwise entitled.

(8) "Responsible party" means a Medicaid recipient.

(9) "Transfer" means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of a individual who:

(a) Has been declared dead; or

(b) Leaves the facility without the permission of any such person.

Section 2. Lock-in Program. (1) All complaints concerning possible recipient abuse or overutilization of Medicaid services by eligible recipients shall be referred for investigation. A potential Medicaid Program abuser or overutilizer may be identified by:

(a) Caseworkers;

(b) Providers, including those that provide services for emergency medical conditions;

(c) The Attorney General's Office;

(d) Hotline referrals;

(e) Surveillance and utilization review system reports showing utilization which exceeds a norm by at least a standard deviation; or

(f) Other staff or outside sources.

(2) If a recipient is identified as needing an overutilization review, an analysis is made of that recipient's utilization of Medicaid services. If the review reveals that an individual has utilization that may be warranted in view of the individual's medical diagnosis, complicating conditions and treatment regime, the review shall be closed.

(3) If the review reveals that an individual does not have a medical condition, complicating condition or treatment regime to warrant the individual's higher than normal utilization, a second level review and investigation shall be conducted to determine if the recipient has abused the Medicaid Program.

(4) Recipient abuse of the Medicaid Program may be:

(a) Intentional; or

(b) May result from a lack of knowledge by the recipient regarding the proper use of medical services.

(5) If overutilization is determined to be the result of a lack of recipient knowledge regarding proper use of medical services, a letter shall be sent to the recipient advising of:

(a) The dangers of inappropriate utilization of medical services; and

(b) The importance of having one (1) physician responsible for directing an individual's medical care.

(6) The department shall notify the recipient in writing of the pending lock-in action. The letter shall:

(a) Explain the right to a hearing regarding the proposed lock-in decision in accordance with Section 3 of this administrative regulation; and

(b) Inform recipient of the date their lock-in status shall be implemented, if a hearing is not requested.

(7) A recipient who has previously been identified as abusing or overutilizing the Medicaid Program, whether based on:

(a) An analysis of the recipient's medical history from the Medicaid summary profile; or

(b) A hearing official's decision in accordance with 907 KAR 1:675, be locked into specific Medicaid providers including:

1. A physician; and

2. A pharmacy.

(8) The lock-in physician and pharmacy shall be selected by the department. The selected providers shall be accessible within normal time and distance standards for the community in which the recipient lives.

(9) A recipient identified as abusing or overutilizing the program shall be locked in for a minimum of six (6) months. After the lock-in

period, periodic determinations to be performed every six (6) months or more frequently, as needed, shall be made to:

(a) Determine the effectiveness of the lock-in; and

(b) Determine whether the lock-in payment status shall continue for another six (6) month period.

(10) Lock-in physicians shall serve as case managers for referrals to all health facilities and services, except for emergency services. A case management fee of ten (10) dollars shall be paid to the lock-in physician at the beginning of each month for each assigned lock-in recipient.

(11) Designated lock-in providers shall remain effective for twelve (12) months. Changes in lock-in providers shall be permitted only upon:

(a) The request of the lock-in provider; or

(b) In the event that the recipient moves out of the lock-in providers area; or

(c) If the recipient can show that it is inappropriate for the recipient to be locked into a specific provider; or

(d) For the convenience of the department.

(12) The department shall consider whether or not a physician has contributed to overutilization when determining the selection for a lock-in physician or pharmacist.

(13) No Medicaid payment shall be made on behalf of a lock-in recipient for the following:

(a) Physician services provided by other than the lock-in physician or other medical services or supplies which have not been preauthorized through a referral from the lock-in physician;

(b) Prescription drugs prescribed by other than the lock-in physician or a physician authorized by the lock-in physician;

(c) Pharmacy services provided by other than the lock-in pharmacy;

(d) Except for services for emergency medical conditions shall be provided and Medicaid payment made in accordance with 907 KAR 1:014 and 907 KAR 1:015.

(14) The recipient's Medicaid identification card shall:

(a) Include a code which identifies his lock-in status; and

(b) Specify the designated lock-in providers and lock-in limitations.

Section 3. Appeal Rights. A recipient who receives advance notice of a decision to place him in lock-in status shall have the right to request a hearing in accordance with KRS Chapter 13B prior to lock-in action by the department.

Section 4. Continued Pattern of Program Overutilization. If utilization patterns reflect that a responsible party, who has completed a period of lock-in status in accordance with this administrative regulation, may have committed an intentional program violation, administrative action shall be taken in accordance with 907 KAR 1:675.

Section 5. Fraud Referral. At any point if a determination is made that fraud has likely occurred, the recipient's case shall be referred for investigation in accordance with KRS 205.8453(3).

Section 6. Implementation Date. The provisions of this administrative regulation shall be applicable February 1, 1996.

MASTEN CHILDERS II, Commissioner/Secretary
APPROVED BY AGENCY: December 1, 1995
FILED WITH LRC: December 5, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All Medicaid recipients who are identified as overutilizing or misutilization Medicaid benefits

ADMINISTRATIVE REGISTER - 1301

through sources outlined in this administrative regulation. Currently, there are 1,136 that are in lock-in status with 54 pending actions in the Medicaid Program.

(2) Direct and indirect cost or savings to those affected: The cost to Medicaid recipients would not include a dollar amount for lock-in but rather would involve a primary care physician managing the recipient placed into lock-in which could reduce Medicaid costs if over or misutilization is determined to have occurred. Rather than being allowed to go wherever the recipient chooses, a primary physician would be required to refer lock-in recipients to a particular medical provider, thus reducing the risk of overutilization or misutilization.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: This will be determined following the Notice of Intent being published.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: This will be determined following the Notice of Intent being published.

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

1. First year following implementation: There should be no additional compliance, reporting or paperwork requirements to the Medicaid recipient placed in lock-in status. There would be some sort of a referral from the primary physician required for those individuals placed in lock-in.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: This amendment will have an effect on the administrative body in that there might be an increase in the number of complaints received on Medicaid recipients who are thought to be overutilizing or misutilizing their Medicaid benefits. This could cause an increase in the number of profile summaries required from the surveillance and utilization review system reports. In addition, some educational material will need to be developed and distributed to Medicaid recipients.

(a) Direct and indirect cost or savings: It is difficult for the agency to determine the direct or indirect savings as a result of this amendment. The agency believes that a savings will be experienced due to the fact that medical services for those recipients determined to be overutilizing or misutilizing Medicaid benefits will be curtailed by the lock-in process. A primary physician will have responsibility for referring recipients who have been locked-in in order for Medicaid to pay for the medical service.

1. First year: See direct and indirect cost or savings.

2. Continuing cost or savings: See item #1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional reporting and paperwork requirements as a result of this amendment which will include obtaining summary profiles from the Medicaid payment system to determine whether overutilization or misutilization has occurred.

(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 determined after the Notice of Intent is published.

(b) Kentucky: To be determined after the Notice of Intent is published.

(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: This administrative regulation should enhance the program integrity of the Medicaid Program through a lock-in process whereby Medicaid recipients who have overutilized or misutilized the Medicaid Program can be locked-in to one physician and one pharmacist. In order to receive Medicaid payments for any other medical services other than those in which an emergency medical condition exists, will require a referral from the primary physician. This process should benefit the recipient and the Medicaid Program by providing medical services in the most cost efficient manner while preventing overutilization or misutilization from occurring.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect is potential is this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If no action is taken by the agency, there is no effective mechanism to deter Medicaid recipients from overutilizing or misutilized the Medicaid Program. Currently, recipients are placed into lock-in but the current process has proven to be ineffective and inefficient. In addition, this administrative regulation brings the cabinet into compliance with KRS 205.8453.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise question 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. The lock-in provisions is an option available to states in the federal regulation 42 CFR 431.54. Lock-in procedures are currently in place but this administrative regulation enhances the existing program.

2. State compliance standards. Same as item #1.

3. Minimum or uniform standards contained in the federal mandate. At option, states may lock-in Medicaid recipients if specific criteria is met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

ADMINISTRATIVE REGISTER - 1302

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

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

RELATES TO: KRS 121.140(4)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.140(4) provides for a hearing before a three (3) judge panel in cases in which the Registry of Election Finance and a respondent fail to reach a conciliation agreement. It is necessary to promulgate this administrative regulation to establish procedural guidelines to be followed in the initiation of those hearings, selection of judges to sit on the panels, and payment of per diem compensation and expenses of judges.

Section 1. Administrative Pleadings. (1) Upon the failure of the registry and the respondent to reach a conciliation agreement, and submission of a request for panelists as required by KRS 121.140(4), the general counsel shall prepare an administrative complaint which shall include the following:

(a) A statement of the allegations contained in the original complaint;

(b) The registry's findings of fact and conclusions of law in support of a finding of probable cause or the registry's notice of noncompliance with reporting requirements pursuant to 32 KAR 2:040(10);

(c) A statement that attempts to negotiate a conciliation agreement have been unsuccessful; and

(d) A statement that conciliation negotiations have been extended for the maximum period allowed by 32 KAR 2:050(3).

(2) The general counsel shall prepare an administrative subpoena which, along with a copy of the administrative complaint, shall be served upon the respondent either personally or by certified mail, return receipt requested. This notification shall be made in accordance with the schedule established by KRS 121.140(4).

(3) A respondent to an administrative complaint as provided in subsection (1) of this section shall have twenty (20) days from the date of receipt of the administrative subpoena and complaint to file a written response. The response shall be filed at the offices of the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(4) Within a reasonable time of the final selection of the three (3) panelists, the general counsel shall forward copies of the complaint to each member of the panel and shall, thereafter, forward copies of all other pleadings filed up to the dates of the hearing.

(5) The executive director shall randomly select a three (3) member panel to serve for a period of three (3) months.

Section 2. Retired or former justice[e] or judge[e] selected to serve on a three (3) judge panel shall receive:

(1) \$300 per diem for the performance of his [their] duties; and

(2) [shall receive] Reimbursement for actual and necessary expenses.

JOSEPH TERRY, Chair

APPROVED BY AGENCY: June 19, 1995

FILED WITH LRC: August 22, 1995 at 1 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board of
Specialists in Hearing Instruments
(As Amended)

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) An applicant[e] for examination shall furnish two (2) forms of identification, one (1) of which shall contain[e] 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. A candidate[e] shall be required to retake only those portions of the examination on which he [they] fails 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 a [any] section of the examination three (3) times shall be required to sit for all portions of the examination. The applicant shall complete additional education and training required by the board. The applicant may sit for the examination only after he has documented completion of the required education and training. [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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(As Amended)

201 KAR 16:050. Continuing education.

RELATES TO: KRS 321.211(7), 321.235(6), 321.441(2)

STATUTORY AUTHORITY: KRS 321.211(7), 321.235(1), (3), (5), (6), (7), 321.441(2)

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 establishes the [sets forth these] requirements for [concerning required] continuing education hours relating

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to the practice of veterinary medicine.

Section 1. (1)(a) A [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.

(b) 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.

(2) A [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 registration. [license. The period during which]

(3) Continuing education shall be earned [received shall] be from October 1 of each year until September 30 of the following year. [These courses approved shall be:]

Section 2. Approved Courses. (1) ~~[(a)]~~ All scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine; and

(2) ~~[(b)]~~ All programs approved by the board, not associated with the American Veterinary Medical Association and its sub-organizations.

(3) ~~[(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. (1) A licensee and a registrant shall:

(a) Secure documentation of attendance at a course; and

(b) Annually, list on "Licensed Veterinarian Annual Renewal Form" or "Veterinary Technician Annual Renewal Form", as appropriate, each course he attended.

(2) The board may require documentation of attendance at continuing education courses to be submitted to it. [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. (1) 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.

(2) A written request for waiver or extension of time shall be:

(a) Submitted by the licensee and registrant; and

(b) ~~[shall be]~~ Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of the minimum continuing education requirements or an extension 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 [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 or registrant shall reapply for another extension.

Section 4. (1)(a) A license or registration that has been terminated shall be reinstated if a licensee or registrant submits proof that he has completed the required number of continuing education hours within the twelve (12) month period immediately preceding the date on which the application is submitted.

(b) The board may permit the immediate reinstatement of a terminated license or registration if the licensee or registrant agrees to complete the required number of continuing education

hours within six (6) months of the date of reinstatement.

(2) Prior to renewal of a license or registration for the licensure period following the licensure period during which the license or registration was reinstated, a reinstated licensee or registrant shall have completed the number of continuing education hours required for renewal of a license or registration by Section 1 of this administrative regulation.

Section 5. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Licensed Veterinarian Annual Renewal Form (95)"; and

(b) "Veterinary Technician Annual Renewal Form (95)".

(2) These forms may be inspected, copied, or obtained at Kentucky Board of Veterinary Examiners, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or by sending a request to the board at P.O. Box 456, Frankfort, Kentucky 40602. [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.

GENERAL GOVERNMENT CABINET Kentucky Board of Registration for Professional Geologists (As Amended)

201 KAR 31:050. Renewals.

RELATES TO: KRS 322A.060

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.060

NECESSITY AND FUNCTION: KRS ~~[Chapter]~~ 322A.060 establishes conditions for the renewal, suspension, and revocation of certificates of registration. KRS 322A.030(5) authorizes the board to promulgate administrative regulations required to perform its duties. This administrative regulation establishes procedures for the renewal of certificates of registration. [provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes these procedures.]

Section 1. (1) A [Persons] registered [as a] professional geologist shall annually, before October 1, pay to the board the [a] renewal fee established by [as set forth in] 201 KAR 31:010, Section 3(1) [for the renewal of the registration].

(2) A certificate of registration that is [Registrations] not renewed before October 1 of each year shall expire provided by [as set forth in] KRS 322A.060(1).

Section 2. A ninety (90) day grace period shall be allowed beginning October 1, during which a registered professional geologist [time individuals] may:

(1) Continue to practice; and

(2) [may] Renew his certificate of [their] registration upon payment of the [late] renewal fee as provided by [set forth in] 201 KAR 31:010, Section 3(1) [2].

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Section 3. A certificate of registration that is not renewed before December 29 shall be suspended for failure to renew. ~~[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).]~~

(2) Upon suspension, the registered professional geologist ~~[registrant]~~ shall:

(a) Not ~~[no longer]~~ be eligible to practice geology in the Commonwealth; and

(b) ~~[shall]~~ Be notify ~~[sent notice]~~ at the last known address available to the board of his suspension; and

(c) Instructed to cease and desist practice.

Section 4. After the ninety (90) day grace period and before the end of two (2) years, a professional geologist suspended for ~~[individuals with a suspended registration, due to]~~ failure to renew, may have his certificate of ~~[their]~~ registration reinstated upon:

(1) Payment of the reinstatement fee as provided ~~[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.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (As Amended)

201 KAR 33:010. Fees.

RELATES TO: KRS 310.041(1), (5), 310.050

STATUTORY AUTHORITY: KRS 310.041(1), (5), 310.050

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.

(3) Application fees shall not be refundable.

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.

(4) Renewal and reinstatement fees shall not be refundable.

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.

GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (As Amended)

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 procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. Regular Renewal. (1) A ~~[Persons]~~ licensed ~~[as a]~~ dietitian or certified ~~[as a]~~ nutritionist shall annually, before November 1, pay to the board the ~~[a]~~ renewal fee established by ~~[as set forth in]~~ 201 KAR 33:010 for the renewal of the license or certificate.

(2) If a license or certificate is ~~[Licensee or certificate]~~ not renewed before November 1 of each year it shall expire.

(3) Compliance with continuing education requirements shall be documented as provided by 201 KAR 33:030. ~~[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 a licensee or certificate holder ~~[time individuals]~~ may renew his ~~[their]~~ license or certificate upon payment of the renewal fee plus the late renewal fee established by ~~[as set forth in]~~ 201 KAR 33:010.

(2) A licensee or certificate holder ~~[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) Licensee or certificate not renewed before December 31, shall be automatically revoked as specified by KRS 310.050.~~

~~(2) Upon revocation, a~~ the ~~[the]~~ licensee or certificate holder shall:

(1) No longer be eligible to practice in the Commonwealth;

(2) (and shall) Be sent notice at the last known address available to the board that license or certificate ~~[their credential]~~ has been revoked and that he ~~[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 be ~~[have their license or certificate]~~ reinstated if the licensee or certificate holder has ~~[upon]~~:

(1) Paid ~~[Payment of]~~ the renewal fee plus a reinstatement fee as set forth by 201 KAR 33:010; and

(2) Documented that he has ~~[Documentation that they have successfully]~~ complied with the continuing education requirements established ~~[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.

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GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (As Amended)

201 KAR 33:040. Compensation of board members.

RELATES TO: KRS 310.040 [020](5)

STATUTORY AUTHORITY: KRS 310.040 [020](5), 310.041(1)

NECESSITY AND FUNCTION: KRS 310.040 [020](5) requires the board to establish ~~set~~ the compensation for board members by administrative regulation. This administrative regulation establishes ~~sets~~ the compensation of board members.

Section 1. ~~Eligible~~ Members of the board shall:

(a) Receive compensation in the amount of \$100 per day for each day of actual board service; and

(b) Travel expenses as provided ~~to the extent authorized~~ by 200 KAR ~~Chapter~~ 2:006.

CAROLE WILSON, R.D., L.D., Board Chairman

APPROVED BY AGENCY: October 12, 1995

FILED WITH LRC: October 13, 1995 at 10 a.m.

DEPARTMENT OF STATE POLICE (As Amended)

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

(2) ~~[(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.

(3) ~~[(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.

(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) ~~[(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.

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

GENE PETER, Commissioner

APPROVED BY AGENCY: October 11, 1995

FILED WITH LRC: October 11, 1995 at 2 p.m.

DEPARTMENT OF STATE POLICE (As Amended)

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 shall ~~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, and ~~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 his ~~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.

DEPARTMENT OF STATE POLICE (As Amended)

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

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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 forty (40) ~~[sixty (60)]~~ percent of the overall score. As soon as practicable after the oral interview, each applicant shall be advised of his [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.

DEPARTMENT OF STATE POLICE (As Amended)

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 as to whether the applicant is [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.

DEPARTMENT OF STATE POLICE (As Amended)

502 KAR 45:145. Merit Pay Program.

RELATES TO: KRS 16.040, 16.050, 16.080

STATUTORY AUTHORITY: KRS 16.040(1) ~~[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 annual salary [pay] and shall be paid in a lump sum.

Section 2. The officer meets the following 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 involving a state police vehicle in which the officer was at fault.
- (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 shall have received [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.

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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.

DEPARTMENT OF STATE POLICE (As Amended)

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, which may include ~~[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 his ~~[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.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers Division of Motor Vehicle Enforcement (As Amended)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.425 ~~[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 174.425 ~~[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 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

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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 4800. 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.

LABOR CABINET

Kentucky Workers' Compensation Funding Commission (As Amended)

803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 342

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY AND FUNCTION: KRS 342.1223 created the Kentucky Workers' Compensation Funding Commission for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122. KRS 342.122 imposes special fund assessments upon workers' compensation premium for the purpose of funding and prefunding the special fund and Kentucky's Workers' Compensation Program. KRS 342.1223(3) provides the Kentucky Workers' Compensation Funding Commission with all the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including ~~[but not limited to,]~~ the power to make and promulgate administrative regulations. This administrative regulation provides the procedures and forms to be used to report and remit special fund assessments.

Section 1. Definitions. (1) "Carrier" shall have the same meaning defined in KRS 342.0011(6).

(2) "Insurance carrier" shall have the same meaning defined in KRS 342.0011(22).

(3) "Severance or processing of coal" shall have the same meaning defined in KRS 342.0011(23)(a).

(4) "Engaged in severance or processing of coal" shall have the same meaning defined in KRS 342.0011(23)(b).

(5) "Premium" for every group of self-insurers shall have the same meaning defined in KRS 342.0011(24).

(6) "Premium received" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(a).

(7) "Direct written premium" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(b).

(8) "Premium" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(c).

(9) "Return(ed) premiums" for insurance companies shall have the same meaning defined in KRS 342.0011(25)(d).

(10) "Insurance policy" for an insurance company or group self-insurer shall have the same meaning defined in KRS 342.0011(26).

(11) "Self-insurance year" for a group self-insurer shall have the same meaning defined in KRS 342.0011(27).

(12) "Premiums" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the same as defined in KRS 342.0011(28).

(13) "SIC code" shall have the same meaning defined in KRS 342.0011(29).

(14) "KWCF" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(15) "Board" means the board of directors of the Kentucky Workers' Compensation Funding Commission.

(16) "Special fund assessment(s)" means the assessments imposed pursuant to KRS 342.122.

(17) "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(18) "Premiums received" for group self-insurers, including group self-insurers electing to report their premiums and have their special fund assessments computed in the same manner as insurance companies, means any and all assessments levied on its members by such group or contributed to it by the members thereof, including premiums charged off or deferred.

Section 2. Special Fund Assessments. (1) Special fund assessments shall be imposed upon all premiums, including any premiums for Federal Black Lung, for policies providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

(a) Excess, reinsurance or Federal Black Lung coverage for group or individual self-insurers;

(b) Contracts between insurance carriers and reinsurers;

(c) Longshoremen's and Harbor Worker's Compensation Act coverage;

(d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For policies with provisions for deductibles effective on or after January 1, 1995, the premiums upon which special fund assessments are imposed for insurance companies shall not include any schedule rating modifications, debits or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or returned at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned. Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in the severance or processing of coal.

(5) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or returned at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned. Premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance or Black Lung coverage.

(6) Special fund assessments shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all

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employers and 40.00 percent additional for employers engaged in the severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies.

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of this administrative regulation.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance with subsections (5), (6) and (7) of this section.

(d) The election made in accordance with paragraph (a), (b) or (c) of this subsection may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(e) Group self-insurers electing to report their premiums and have their special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f) Group self-insurers electing to report their premiums and have their special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or returned at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in the severance or processing of coal.

(9) Employers self-insuring their Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of Workers' Claims in accordance with KRS 342.0011(28). One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments thereon shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Commissioner of the Department of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11) Special fund assessments shall be paid quarterly, and are due and payable and must be received in the office of the Kentucky Workers' Compensation Funding Commission no later than thirty (30) days following the end of each calendar quarter. If the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable shall be sent to the KWCFC sufficiently in advance so as to be received by the KWCFC no later than close of business on the Friday immediately preceding the weekend due date.

(12) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that imposed by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that imposed by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the

excess to the insured. If, after appropriate efforts, the excess cannot be returned to the insured, the excess shall be remitted to the Funding Commission. In no event shall an insurance carrier retain special fund assessments in excess of those imposed by KRS 342.122 and this administrative regulation.

Section 3. Penalty and Interest. The KWCFC Board or its designee may waive part or all of the penalty, but not the interest, where it is shown to the satisfaction of the board or its designee that failure to pay assessments timely is due to reasonable cause.

Section 4. Refunds. (1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, provided:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2) Taxpayers may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report. The [Such] claim shall be submitted to the Kentucky Workers' Compensation Funding Commission on Form KWCFC-03 (Claim For Refund Report). The taxpayer shall submit with the claim all documents required or requested to support the claim, and any additional information requested by the Funding Commission.

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be [are] subject to audit by the Funding Commission.

Section 5. Audits; General. (1) In accordance with KRS 342.1223(g) the Kentucky Workers' Compensation Funding Commission shall conduct periodic audits independently or in cooperation with the Labor Cabinet or the Revenue Cabinet of all entities subject to the special fund assessments imposed by KRS 342.122.

(2) Until the initial periodic audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the taxpayer. After completion of the initial periodic audit, adequate supporting documentation and records shall be maintained for five (5) years from the date of the last Funding Commission audit or (5) years from the date that the premium and assessment was reported or refund or credit was taken, whichever is later.

Section 6. Audits; Insurance Companies. (1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, including:

- (a) Writing company's indicator;
- (b) Policy number;
- (c) Insured's name;
- (d) Transaction code;
- (e) Accounting date (YY/MM/DD);
- (f) Policy effective date (YY/MM/DD);
- (g) Invoice date (YY/MM/DD);
- (h) Premium;
- (i) Special fund assessment;
- (j) Total (premium and special fund assessment).

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

- (a) Copies of quarterly premiums reports for audit period with backup documentation;
- (b) All documentation required to reconcile the sum of each four calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department of Insurance;
- (c) A listing of Kentucky policies containing written premium

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written off as a bad debt;

(d) A listing of policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;

(e) A complete list of sample policies requested by Funding Commission;

(f) A complete list of deductible policies written nationwide. This list may contain only the policy number, insured's name, and policy effective date;

(g) A complete listing of deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs;

(h) A complete listing of deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation;

(i) All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these policies;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system;

(d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections Report.

(4) The Funding Commission may utilize any of the following procedures in the completion of audits:

(a) Detailed examination of records by policy;

(b) Use of audit sampling techniques;

(c) Verification and reconciliation to NAIC reports;

(d) Other procedures the Funding Commission deems necessary.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period except under the following conditions:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied.

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 7. Audits; Group Self-insurers. (1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period, including:

(a) Group self-insurer's indicator;

(b) Policy or member number;

(c) Insured's name;

(d) Transaction code;

(e) Accounting date (YY/MM/DD);

(f) Member's effective date (YY/MM/DD);

(g) Effective date of self-insurance year;

(h) Invoice date (YY/MM/DD);

(i) Premium;

(j) Special fund assessment;

(k) Total (premium and assessment).

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers'

Claims;

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims;

(d) A complete list of sample policies or agreements requested by the Funding Commission;

(e) All other documents necessary to support reported premiums and assessments.

(2) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into the policy or premium management system;

(c) The dates upon which these rates became active in the policy or premium management system.

(3) The Funding Commission may utilize any and all of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members' account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of Workers' Claims' reports;

(e) Other procedures the Funding Commission determines necessary.

(4) Upon the completion of an audit the Funding Commission will not reaudit a period except under the following conditions:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 8. Audits; Individual Self-insurers. (1) Upon request, self-insurers shall provide the Funding Commission with the following:

(a) Loss experience reports;

(b) Payroll records;

(c) Kentucky UI-3;

(d) Federal Form 941 "Employer's Quarterly Federal Tax Return";

(e) Federal Form 940 "Employer's Annual Federal Unemployment Tax Return";

(f) Any additional information deemed pertinent or necessary.

(2) The Funding Commission may utilize any of the following procedures in completion of audits:

(a) Detailed examination of all required records;

(b) Use of audit sampling techniques;

(c) Other procedures the Funding Commission deems necessary.

Section 9. Audits; Protest and Resolution. (1) The Funding Commission may mail to the taxpayer a notice of any assessment assessed by it. The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the Funding Commission may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable. The refusal of such extension may be reviewed in the same manner as a protested assessment.

(2) After a timely protest has been filed, the taxpayer may request a conference with the Funding Commission staff. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative. Further conferences may be held by mutual agreement.

(3) For those issues not resolved during the conferences

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described in subsection (2) of this section, the taxpayer may request a conference with the Funding Commission's Board of Directors. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative.

(4) After considering the taxpayer's protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state that it is the final ruling of the Funding Commission, generally state the issues in controversy, the Funding Commission's position thereon and set forth the procedure for appeal to the Kentucky Board of Tax Appeals.

(5) The taxpayer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the Funding Commission shall issue such ruling within thirty (30) days from the date the request is received by the Funding Commission.

(6) After a final ruling has been issued, the taxpayer may appeal to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.340.

Section 10. Reports. (1) Insurance companies, group self-insurers and individual self-insurers shall file a Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter. The quarterly premiums report and assessment due and payable shall be received in the office of the KWCFC no later than thirty (30) days following the end of the calendar quarter.

(2) Insurance companies and group self-insurers shall file Form KWCFC-01 (Quarterly Premiums Report).

(3) Employers carrying their own risk shall file Form KWCFC-02 (Quarterly Premiums Report).

(4) Every insurance company providing workers compensation insurance in Kentucky shall submit to the KWCFC an ANNUAL COLLECTION AND AUDIT REPORT and a SIC CODE SUMMARY REPORT for each calendar year no later than April 30th following the end of the calendar year. These reports shall be submitted to the KWCFC on electronic diskettes and shall contain the information in the file content format as specified in the following instructions:

(a) Annual Collection and Audit Report:

- Field 1 Reporting Insurance Co. Name
- Field 2 Insurance Co. NAIC #
- Field 3 Year Covered by Report
- Field 4 Insured Company's Policy #
- Field 5 Insured Company's Name
- Field 6 Insured Company's Address
- Field 7 Insured Company's City
- Field 8 Insured Company's State
- Field 9 Insured Company's ZIP Code
- Field 10 SIC Code
- Field 11 Federal ID Number
- Field 12 Policy Effective Date (YY/MM/DD)
- Field 13 Direct Written Premium Reported to NAIC
- Field 14 Premium Reported to KWCFC
- Field 15 Reconciling Entry (NAIC-KWCFC)
- Field 16 All Employer Special Fund Assessment
- Field 17 Additional Assessment for Coal

(b) SIC Code Summary Report:

- Field 1 Reporting Insurance Co. Name
- Field 2 Insurance Co. NAIC #
- Field 3 Year Covered by Report
- Field 4 SIC Code
- Field 5 Total Direct Written Premium Reported to NAIC by SIC Code
- Field 6 Total Premium Reported to KWCFC by SIC Code
- Field 7 Reconciling Entry (NAIC-KWCFC)
- Field 8 Total All Employer Special Fund Assessment by SIC Code

Field 9 Total Additional Assessment for Coal by SIC Code

(c) For the Annual Collection and Audit Report, 17 fields make up one (1) policy (record). For the Summary Report, nine (9) fields make up one (1) record. Fields can be up to 128 characters in width.

(d) Example (Annual Collection and Audit Report): ABC Ins. Co., Inc.; 534643; 1994; AS1234; XYZ Products, Inc.; 123Way Ave.; Frankfort; KY; 40602; 2345; 93-234567; 94/03/02; 345.99; 345.99; 0;0;0<CR>.

(e) Example (SIC Code Summary Report): ABC Ins. Co., Inc.; 534643; 1994; 2345; 34567.78; 34567.78; 0;0;0<CR>.

(5) Every group self-insurer providing workers compensation insurance in Kentucky shall submit to the KWCFC an ANNUAL COLLECTION AND AUDIT REPORT and a SIC CODE SUMMARY REPORT for each calendar year no later than April 30th following the end of the calendar year. These reports shall be submitted to the KWCFC on electronic diskettes and shall contain the information in the file content format as specified in the following instructions:

(a) Annual Collection and Audit Report:

- Field 1 Reporting Group Self-insurer Name
- Field 2 Group Self-insurer FEIN #
- Field 3 Year Covered by Report
- Field 4 Group Self-insurer's Policy or Member #
- Field 5 Insured Company's Name
- Field 6 Insured Company's Address
- Field 7 Insured Company's City
- Field 8 Insured Company's State
- Field 9 Insured Company's ZIP Code
- Field 10 SIC Code
- Field 11 Federal ID Number
- Field 12 Policy Effective Date (YY/MM/DD)
- Field 13 Direct Written Premium Reported to Workers' Claims
- Field 14 Premium Reported to KWCFC
- Field 15 Reconciling Entry (Workers' Claims-KWCFC)
- Field 16 All Employer Special Fund Assessment
- Field 17 Additional Assessment for Coal

(b) SIC Code Summary Report:

- Field 1 Reporting Group Self-insurer Name
- Field 2 Group Self-insurer FEIN #
- Field 3 Year Covered by Report
- Field 4 SIC Code
- Field 5 Total Direct Written Premium Reported to Workers' Claims by SIC Code
- Field 6 Total Premium Reported to KWCFC by SIC Code
- Field 7 Reconciling Entry (Workers' Claims-KWCFC)
- Field 8 Total All Employer Special Fund Assessment by SIC Code

Field 9 Total the Summary Report, 9 fields make up one (1) record. Fields can be up to 128 characters in width.

(c) Example (Annual Collection and Audit Report): ABC Ins. Co., Inc.; 534643; 1994; AS1234; XYZ Products, Inc.; 123Way Ave.; Frankfort; KY; 40602; 2345; 93-234567; 94/03/02; 345.99; 345.99; 0;0;0<CR>.

(d) Example (SIC Code Summary Report): ABC Ins. Co., Inc.; 534643; 1994; 2345; 34567.78; 34567.78; 0;0;0<CR>.

(6) The data required to be submitted to the Funding Commission in this section shall be submitted in one (1) of the following formats, listed in order of preference, or any other format agreed upon by the parties:

(a) ASCII text with a semicolon (;) used as a field separator between different fields and a carriage return to indicate the end of the record;

(b) Files saved in Microsoft Excel (DOS, Windows, Mac; any version number);

(c) Files saved in Lotus 1-2-3 (DOS, Windows, Mac; any version number);

(d) ASCII text with a tab as a field separator between different fields and a carriage return at the end of the record.

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(7) The data required to be submitted to the Funding Commission in this section shall be submitted on one (1) of the following types of diskettes, listed in order of preference, or any other format agreed upon by the parties:

- (a) 3.5" 720K PC formatted micro-floppy diskette;
- (b) 3.5" 800K Mac formatted micro-floppy diskette;
- (c) 3.5" 1.4Mb Mac/PC formatted micro-floppy diskette;

(8) An insurance company or group self-insurer that does not write, receive or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Nonwriter Statement) to the Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602 no later than April 30th following the end of the calendar year.

Section 11. Forms. (1) Forms KWCFC-01, KWCFC-02, KWCFC-03, and KWCFC-04 are incorporated and adopted herein by reference.

(2) Forms may be obtained from the office of the Kentucky Workers' Compensation Funding Commission, 42 Millcreek Park, P.O. Box 1220, Frankfort, Kentucky 40602 during office hours, 8 a.m. to 4:30 p.m., Monday through Friday.

JAMES MEESE, Chairman

APPROVED BY AGENCY: September 12, 1995

FILED WITH LRC: September 15, 1995 at noon

PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission (As Amended)

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 **807 KAR Chapter 5** ~~[the preceding administrative regulations]~~ or by using ~~[following]~~ the procedure prescribed in this administrative regulation ~~[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 shall ~~[will]~~ make its decision based on ~~[the basis of the information contained in]~~ the:

(a) 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]~~

(b) ~~[the]~~ Application ~~[form]~~; ~~[and upon]~~

(c) Information supplied by the applicant in response to ~~[informa-~~
~~tional]~~ requests submitted by the intervenors and the commission; and

(d) 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, ~~[200 St. Clair Street]~~, Frankfort, Kentucky 40602-2000 ~~[40604]~~, 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) 564-3040, 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 shall ~~[in addition, notice thereof]~~.

(4) (a) ~~[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 ~~[differ 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 ~~[;~~

(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, ~~[-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 [ee] 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 [its] 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.

**CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(As Amended)**

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. Copies of the manuals are on file for inspection in the Division of Administration and Financial Management, Department for Mental Health and Mental Retardation Services, 4th Floor, Leestown Square, 100 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~~

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~~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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

**401 KAR 50:031. Regulatory limit on potential to emit
[Inherent physical limitations].**

RELATES TO: KRS 224.10-100, 224.20-120; 42 USC 7661-7661f, 401 KAR 50:035

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-120, 42 USC 7661-7661f

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes new criteria for determining major source status under Title V of the Clean Air Act Amendments of 1990.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Act" means the Clean Air Act promulgated at 42 USC 7401-7671q, as amended by PL 101-549 (November 15, 1990) and PL 102-187 (December 4, 1991).

(2) "Actual emissions" means the emissions of a regulated air pollutant from a stationary source during a calendar year. [every twelve (12) month period.] Actual emissions are determined using data that is provided to the cabinet at the beginning of each year for the purpose of updating the Kentucky Emissions Inventory System (KyEIS), or by other information deemed appropriate by the cabinet. Actual emissions do not include any activity or emissions unit that is not required to be permitted pursuant to 401 KAR 50:035. [continuous emission monitoring data or source test data where available. In the absence of this or similar data, actual emissions are determined using throughputs of process materials and materials stored, usage of materials, manufacturer's product specifications, material VOC content reports or laboratory analyses, other information required by this and other applicable state and federal administrative regulations, and other information as requested in writing by the cabinet.]

(3) "Classification date" means thirty (30) days after the date on which the U.S. EPA publishes a final rule granting full or interim approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661-7661f (Title V of the Act).

(4) "Conditional major permit [FESOP] or [federally enforceable state operating permit]" means a permit issued by the cabinet pursuant to 401 KAR 50:035, Section 5(1)(a), which limits a source's potential to emit below the thresholds which require a source to obtain a Part 70 permit, and which is [made federally.] enforceable.

(5) "HAP" or "hazardous air pollutant" means a pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act).

(6) "Inherent physical limitation" means a condition that is inherent in the physical design or operation of a source which limits its potential to emit. Inherent physical limitations are not required to be federally enforceable.

(7) "Major source" means a source that emits or may emit a regulated air pollutant and which is described in paragraph (a), (b), or (c) of this subsection.

(a) A source that directly emits or has the potential to emit 100

tons per year or more of a regulated air pollutant that is not a HAP. Fugitive emissions shall be considered in determining if the source is a major source only if the source belongs to one (1) of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or

27. A [All other] stationary source category [categories] subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7412 (Section 112 of the Act) and for which the U.S. EPA has made an affirmative determination pursuant to 42 USC 7602(j) (Section 302(j) of the Act).

(b) On or after the classification date, a source that directly emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a HAP, or twenty-five (25) tons per year or more of a combination of HAPs, or a lesser quantity of HAPs which the U.S. EPA has established by rule. All fugitive emissions of HAPs shall be considered in determining if the source is a major source. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units comprise a source as defined in subsection (13) of this section, to determine whether the units or stations are major sources.

(c) A major stationary source as defined in 42 USC 7501 to 7515 (Part D of the Act) including:

1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as marginal or moderate, fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," or ten (10) tons per year or more in areas classified as "extreme;"

2. For carbon monoxide nonattainment areas that are classified as "serious," sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and

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3. For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM₁₀.

(7) ~~[(8)]~~ "Minor source" means a source whose potential to emit is less than the thresholds for a major source as defined in subsection (6) ~~[(7)]~~ of this section.

(8) ~~[(9)]~~ "Part 70 permit" means an operating permit issued to a source pursuant to a Title V program approved by the U.S. EPA.

(9) ~~[(10)]~~ "Process statement" means an ~~[annual]~~ emissions report **covering one (1) or more calendar years that is** certified by the owner or operator of a source, **and** which provides the following: throughputs of process materials and materials stored, usage of materials, fuel usage, available continuous emissions monitoring data, hours of operation, and other information requested in writing by the cabinet.

(10) ~~[(11)]~~ "PTE" or "potential to emit" means the maximum capacity of a source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is ~~[federally-]~~ enforceable.

(11) ~~[(12)]~~ "Regulated air pollutant" means the following:

(a) Volatile organic compounds (VOCs) and oxides of nitrogen;

(b) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);

(c) A Class I or Class II ozone-depleting substance subject to a standard promulgated pursuant to 42 USC 7671-7671q (Title VI of the Act);

(d) A pollutant subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act); or

(e) A pollutant subject to a standard or requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act), as provided below:

1. A pollutant listed pursuant to 42 USC 7412(r) (Section 112(r) of the Act) shall be considered regulated upon promulgation of the list.

2. A HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to 42 USC 7412(d) (Section 112(d) of the Act) or adopted by the cabinet pursuant to 42 USC 7412(g) and (j) (Section 112(g) and (j) of the Act) shall be considered regulated for all sources or categories of sources upon promulgation of the standard or requirement, or eighteen (18) months after the standard or requirement was scheduled to be promulgated pursuant to 42 USC 7412(e)(3) (Section 112(e)(3) of the Act), whichever date is sooner.

3. A HAP for which the cabinet has made a case-by-case emission limitation determination pursuant to 42 USC 7412(g)(2) (Section 112(g)(2) of the Act) shall be considered regulated, but only for the source for which the determination was made.

(12) ~~[(13)]~~ "Source" means a stationary source, or a group of stationary sources, that are located on one (1) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping (i.e., all have the same two (2) digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21), and which emits or may emit a regulated air pollutant.

(13) ~~[(14)]~~ "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.

(14) ~~[(15)]~~ "State-origin permit" means a permit that contains only state-enforceable requirements, or that contains federally-enforceable requirements but is not required by the U.S. EPA to be a federally-enforceable permit.

~~[(16)] "Twelve (12) month period" means a period of twelve (12) consecutive months determined on a rolling basis with a new twelve (12) month period beginning on the first day of each calendar month.]~~

Section 2. Applicability. (1) This administrative regulation shall apply to any source:

(a) **That complies with the notification requirements in Section 4(1)(a) of this administrative regulation;**

(b) Whose PTE equals or exceeds the major source thresholds provided in Section 1(6) ~~[(7)]~~(a), (b), or (c) of this administrative regulation **at the time of notification;** and

~~[(b) That has operated continuously for at least one (1) twelve (12) month period beginning twenty-four (24) months immediately preceding the effective date of this administrative regulation; and]~~

(c) Whose actual emissions **during each calendar year beginning January 1, 1996** ~~[beginning twenty-four (24) months immediately preceding the effective date of this administrative regulation]~~ and continuing thereafter do not exceed the **limits [values]** shown below:

1. Fifty (50) **percent of the major source threshold for [tons per year-]** a regulated air pollutant (excluding HAPs);

2. Five (5) tons per year of a single HAP, **or fifty (50) percent of any major source threshold less than ten (10) tons per year that the U.S. EPA may establish by rule; and**

3. Twelve and a half (12.5) tons per year of any combination of HAPs. ~~[and]~~

4. ~~Fifty (50) percent of a lesser threshold for a single HAP that the U.S. EPA may establish by rule.]~~

(2) A source that has applied for a Part 70 permit or a **conditional major permit [FESOP]** shall not be subject to this administrative regulation unless the owner or operator of the source voluntarily withdraws the application.

(3) A source that has received a Part 70 permit or a **conditional major permit [FESOP]** shall not be subject to this administrative regulation ~~[unless the permit has expired and the owner or operator does not apply for renewal].~~

(4) Nothing in this administrative regulation shall prevent a source from applying for or receiving a Part 70 permit or a **conditional major permit [FESOP]** in lieu of complying with this administrative regulation.

(5) Nothing in this administrative regulation shall relieve a source from the obligation to:

(a) Obtain a Part 70 permit ~~[or a FESOP]~~ if required to do so for any reason other than its status as a major source under 42 USC 7661-7661f (Title V of the Act);

(b) Obtain a state-origin permit or other type of permit if required to do so pursuant to 401 KAR 50:035; or

(c) Operate in compliance with all applicable state and federal requirements.

Section 3. General Provision. **A source that is subject to this administrative regulation and complies with the notification, recordkeeping, and reporting requirements in Sections 4, 5, and 6 of this administrative regulation** ~~[The cabinet has determined that a source subject to this administrative regulation has an inherent physical limitation which prevents it from becoming a major source pursuant to 42 USC 7661-7661f (Title V of the Act). Those sources]~~ shall be classified as **a minor source[e] pursuant to 40 CFR Part 70 and 401 KAR 50:035** and shall be deferred from the obligation to **apply for [obtain] a Part 70 permit or a conditional major permit [FESOP]** until twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit, or within five (5) years after the classification date, whichever date is earlier.

Section 4. Notification, Compliance, and Enforcement. (1)**(a) The owner or operator of a source that meets the requirements in Section 2(1)(b) and (c) of this administrative regulation, and who chooses to comply with this administrative regulation in lieu of obtaining a Part 70 permit or a conditional major permit, shall notify the cabinet after the effective date of this administrative regulation but not later than eight (8) months after the classifica-**

tion date [within sixty (60) days after the source becomes subject to this administrative regulation]. The notification shall be certified by the owner or operator. It shall state that the source is subject to this administrative regulation and, except as noted below, that the source meets the requirements of Section 2(1)(b) and (c) of this administrative regulation as of the date of notification. If the source's actual emissions in any calendar year during the period beginning January 1, 1991 and ending December 31, 1995 exceeded the limits in Section 2(1)(c) of this administrative regulation, the notification shall include a description, in sufficient detail to allow verification by the cabinet, of how the source will comply with the limits. If the owner or operator has submitted an application for a Part 70 permit or a conditional major permit and chooses to withdraw the application, the request for withdrawal shall also be included in the notification. [and shall include a certified process statement demonstrating that the source complies with the requirements in Section 2(1) of this administrative regulation.]

(b) A source that notifies the cabinet pursuant to paragraph (a) of this subsection that is not listed in the KyEIS will be notified and shall be required to submit a process statement within thirty (30) days of notification.

(c) The source shall begin complying with the recordkeeping and reporting requirements in Sections 5 and 6 of this administrative regulation immediately upon notification to the cabinet.

(2) A source that is subject to this administrative regulation and fails to submit a process statement, if required, pursuant to subsection (1)(b) of this section, or fails to comply with the recordkeeping and reporting requirements in Sections 5 and 6 of this administrative regulation [comply with the notification, recordkeeping, and reporting requirements in subsection (1) of this section] shall be in violation of this administrative regulation and shall be subject to enforcement action. Additionally, if the source fails to comply with these requirements within thirty (30) days after notice of violation is provided by the cabinet, it shall no longer be subject to this administrative regulation and shall be required to submit an application pursuant to 401 KAR 50:035 for a Part 70 permit or a conditional major permit within six (6) months following the date of the notice of violation, or within one (1) year following the classification date, whichever date is later. [FESOP.]

(3) A source whose actual emissions exceed the limits in Section 2(1)(c) of this administrative regulation but does not exceed the major source thresholds in Section 1(6)(a), (b), or (c) of this administrative regulation shall be in violation of this administrative regulation and shall be subject to enforcement action. Additionally, the source shall be required to submit a complete application for a Part 70 permit or a conditional major permit as follows:

(a) If the source notifies the cabinet that it is going to exceed the emission limits thirty (30) days prior to the exceedance, the source shall be required to submit an application within one (1) year following the date of notification.

(b) If the cabinet determines that the source has exceeded the emission limits and the source has not notified the cabinet thirty (30) days in advance, the source shall be required to submit an application within four (4) months after the date the cabinet notifies the source of its finding, or within one (1) year after the classification date, whichever date is later.

[(3) A source whose actual emissions exceed the values given in Section 2(1) of this administrative regulation, or who is required to obtain a permit for noncompliance pursuant to subsection (2) of this section, shall submit an application to the cabinet for a Part 70 permit or a FESOP within six (6) months after:

(a) The exceedance occurs; or

(b) The source is notified that it must obtain a permit.]

(4) A source that exceeds the major source thresholds provided in Section 1(6)(a), (b), or (c) of this administrative

regulation shall be in violation of this administrative regulation and 401 KAR 50:035, and shall be subject to immediate enforcement action. The source shall also be immediately subject to any additional requirements which may apply. [A source that is required to obtain a Part 70 permit or a FESOP pursuant to subsection (3) of this section shall not become subject to this administrative regulation again until the Part 70 permit or FESOP has expired and the source has demonstrated its ability to comply with all the provisions of this administrative regulation.]

Section 5. Recordkeeping Requirements. ~~[(2)]~~ The owner or operator shall keep and maintain records for each emission unit sufficient to determine actual emissions. In the case of groups of similar units connected in series, records may be kept on the group rather than on each individual unit (e.g., a series of spray booths with a common feed, or internal combustion engines in an oil field fed by a common fuel line). These records shall be summarized and totaled at the end of each quarter (March 31, June 30, September 30, and December 31) and again at the end of each calendar year. They shall be [in a monthly log,] maintained on site for five (5) years, and made available for inspection by the cabinet or the U.S. EPA on request.

(1) [The owner or operator shall keep and maintain the records prescribed in subsection (2) of this section unless the actual emissions of the source do not exceed the values shown below:

(a) Five (5) tons per year of a regulated air pollutant (excluding HAPs);

(b) One (1) ton per year of a single HAP;

(c) Two and a half (2.5) tons per year of any combination of HAPs; and

(d) Ten (10) percent of any lesser threshold for a single HAP that the U.S. EPA may establish by rule.

(a)] Coating or solvent emission unit. Owners or operators of sources that contain a coating or solvent emission unit or that use a coating, solvent, ink or adhesive shall keep and maintain the following records:

(a) [1-] A current list of all coatings, solvents, inks and adhesives in use. This list shall include: information on the manufacturer, brand, product name or CAS number, VOC content in grams per liter or pounds per gallon, HAPs content in grams per liter or pounds per gallon, or manufacturer's product specifications, material VOC content reports or laboratory analyses providing this information;

(b) [2-] A description of all equipment used during and after coating or solvent application, including type, make and model; maximum design process rate or throughput; type and description of control devices used; and a description of the application method and drying method used;

(c) [3-] A quarterly [monthly] log of the consumption of each solvent, including solvents used in purging, clean-up, and surface preparation, and of each coating, ink, and adhesive used; and

(d) [4-] All purchase orders, invoices, and other documents to support information in the quarterly [monthly] log.

(2) [(b)] Organic liquid storage unit. Owners or operators of sources containing a permitted organic liquid storage unit shall keep and maintain the following records:

(a) [1-] A quarterly [monthly] log identifying the liquid stored and used [monthly throughput]; and

(b) [2-] Information on the tank design and specifications including control equipment.

(3) [(c)] Combustion emission unit. Owners or operators of sources containing combustion emission units shall keep and maintain the following records:

(a) [1-] Information on equipment type, make and model, maximum design process rate or maximum power input and output, minimum operating temperature and capacity of thermal oxidizers, type and description of control devices used, and all source test information; and

(b) [2-] A quarterly [monthly] log of hours of operation, fuel type, fuel usage, fuel heating value, and percent sulfur for fuel oil and coal. For nonfossil fuels, heating value shall be expressed in BTU/lb or BTU/gal.

(4) [(d)] Emission control unit. Owners or operators of sources containing emission control units shall keep and maintain the following records:

(a) [1-] Information on equipment type and description, make and model, and emission units served by the control unit;

(b) [2-] Information on equipment design including where applicable, pollutants controlled; control efficiency; maximum design or rated capacity; inlet and outlet temperatures, and concentrations for each pollutant controlled; catalyst data (type, material, life, volume, space velocity, ammonia injection rate and temperature); baghouse data (design cleaning method, fabric material, flow rate, air-to-cloth ratio); electrostatic precipitator data (number of fields, cleaning method, and power input); scrubber data (type, design, sorbent type, pressure drop); other design data as appropriate; all source test information; and

(c) [3-] A quarterly [monthly] log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

(5) [(e)] General emissions unit. Owners or operators of sources containing emission units not described in paragraphs (a) through (c) of this subsection shall keep and maintain the following records:

(a) [1-] Information on the process and equipment including the following: equipment type, description, make and model, maximum design process rate or throughput, and type and description of control devices used;

(b) [2-] A quarterly [monthly] log of operating hours, each raw material used and its amount, each product produced and its production rate;

(c) [3-] Purchase orders, invoices, and other documents to support information in the quarterly [monthly] log; and

(d) [4-] Any additional information requested in writing by the cabinet.

Section 6. Reporting Requirements. The cabinet shall mail a printout of the current emissions inventory data contained in the KyEIS to each source subject to this administrative regulation on or before December 15 of each year. The owner or operator shall update the information as instructed, including the required certification, and return it to the cabinet no later than January 15 of the following year. [The owner or operator of a source shall submit a certified process statement to the cabinet each year on the anniversary of the notification date provided in Section 4(1) of this administrative regulation, unless the actual emissions of the source do not exceed the values shown below:

(1) ~~Twenty-five (25) tons per year of a regulated air pollutant (excluding HAPs);~~

(2) ~~Two and a half (2.5) tons per year of a single HAP;~~

(3) ~~Six and a quarter (6.25) tons per year of any combination of HAPs; and~~

(4) ~~Twenty-five (25) percent of any lesser threshold for a single HAP as the U.S. EPA may establish by rule.]~~

Section 7. This administrative regulation shall expire on December 15, 2000. A source whose PTE equals or exceeds the major source thresholds in Section 1(6)(a), (b), or (c) on December 15, 2000 shall be considered a major source for purposes of the Title V operating permit program.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 11, 1995

FILED WITH LRC: December 15, 1995 at 8 a.m.

TRANSPORTATION CABINET
Department of Highways
Permits Branch
(Amended After Hearing)

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 the Shelbyville-Jefferson County line to the West Virginia state line ~~(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 incorporated 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. as revised November 1995 ~~(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) Except as allowed in subsection (9) of this section, 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.

(9)(a) If a specific information panel has at least two (2) unused display spaces, and if another of the specific information panels is full but there are additional eligible businesses requesting logo space for that panel or service, the panel with the unused space may be converted to a combination specific information sign to include the additional service.

(b) A qualified motorist service logo displayed as a result of the creation of a combination specific service information sign in paragraph (a) of this subsection shall have a lower priority than a qualified motorist service of the type initially displayed on the panel.

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 **unless as set forth in Section 4(9) of this administrative regulation;**

(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.

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(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.

(5) If the appellant wishes to continue the appeal after the administrative hearing set forth in KRS Chapter 13B, the court of proper jurisdiction for the filing of an appeal shall be Franklin Circuit Court. [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

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 8, 1995

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

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: There should be no change in the cost of living. However, businesses which are able to purchase logo space as a result of the change in the administrative regulation are likely to experience growth and therefore may need to hire an additional employee or two.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The amendment to the administrative regulation will make more logo space available in Kentucky. The businesses which are able to purchase the logo space will do so voluntarily. In most instances, businesses which are able to purchase the logo space will do so voluntarily. In most instances, the erection

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of a logo on a limited access highway increases the activity at the specific business.

(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. The do-nothing alternative in regard to the use of vacant space on panels was rejected because this change will allow the 13 businesses bumped from a logo panel in 1995 to purchase space on a newly-created combination panel. Other businesses will also be able to purchase logo space. This alternative has many positives, but few negatives.

(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. The change to the administrative regulation made after the public comment hearing will allow additional businesses 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.

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 specifically set forth and submitted to the Federal Highway Administration. This administrative regulation accomplishes the federal requirement.

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.

FEDERAL MANDATE ANALYSIS COMPARISON

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 1995

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services
(Proposed Amendment)

12 KAR 1:115. Sampling, analyzing, testing, and tolerances.

RELATES TO: 1994 Ky. Acts ch. 370

STATUTORY AUTHORITY: 1994 Ky. Acts ch. 370

NECESSITY AND FUNCTION: To prescribe the methods of sampling, analyzing, and testing seed, and to establish the tolerances to be applied in the administration of the Kentucky Seed Law and administrative regulations.

Section 1. The methods of sampling, analyzing, testing and examining seed to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 2. The tolerances to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 3. Incorporation by Reference. (1) "Rules for Testing Seeds", Vol. 16, No. 3, 1993 revised 1994, revised 1995, Journal of Seed Technology, Association of Official Seed Analysts, is incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 30, 1995

FILED WITH LRC: December 7, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on proposed administrative regulation 12 KAR 1:115, Sampling, analyzing, testing, and tolerances, shall be held on Monday, January 29, 1996, at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington. Individuals interested in attending this hearing shall notify this agency in writing of their intent to attend by Wednesday, January 24, 1996, five days before the hearing. 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 regulation. A transcript of the hearing will not be made unless requested in writing. Anyone who does not wish to be heard at the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky (606) 257-2785.

REGULATORY IMPACT ANALYSIS

Contact person: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, University of Kentucky, Lexington, Kentucky.

(1) Type and number of entities affected: All persons who label or who sell seed in Kentucky are affected.

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

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. There will be no direct or indirect costs or savings associated with the changes in Rules for Testing Seed in any geographical area in Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. There will be no effect on the cost of doing business in any geographical area in Kentucky because of the changes to Rules for Testing Seeds.

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

1. First year following implementation: There are no factors of significance in the areas of compliance, reporting, or paperwork requirements during the first year of implementation. There are no factors which would increase or decrease costs during the first year of implementation. There are no factors which would effect competition.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no factors which would effect costs or savings to the promulgating body, either directly or indirectly.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no factors which would increase or decrease costs to the promulgating body.

(b) Reporting and paperwork requirements: There are no factors which would significantly increase or decrease reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no effect on the revenue source used to implement and enforce the administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible substitute for the Rules for Testing Seeds.

(8) Assessment of expected benefits: The Rules for Testing Seeds specify testing procedures necessary for producing fair and reliable test results for samples tested in the Kentucky Agricultural Experiment Station Seed Laboratory. The testing procedures and tolerances specified in Rules for Testing Seeds are used by other states in the administration of their state seed laws. A uniform application of testing procedures and tolerances among states is necessary.

(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: We are

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not aware of any conflicts or duplications.

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) There is no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

AUDITOR OF PUBLIC ACCOUNTS (Amendment)

45 KAR 1:030. Audits of sheriff's tax settlements.

RELATES TO: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810

STATUTORY AUTHORITY: KRS 43.070(1)(b), 43.075, 64.810

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required by KRS 43.075 to develop uniform auditing standards, procedures, and formats for performing and reporting audits of elected county officials. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to sheriff's tax settlement audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States[~~July 1988~~].

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds contained in each sheriff's tax settlement shall be conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) The "Audit Guide for Sheriff's Tax Settlements".

(2) Financial statements shall be prepared on a cash basis.

~~(3)(a) The following documents are incorporated by reference:~~

~~1. "Audit Guide for Sheriff's Tax Settlements", Auditor of Public Accounts, August 15, 1991;~~

~~2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and~~

~~3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).~~

~~(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 427 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.]~~

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a sheriff's tax settlement shall be an audit report that provides an opinion on whether the financial statement of a sheriff's tax settlement presents fairly, in all material respects, the taxes charged, credited, and paid during the tax year.

(2) An auditor shall make tests sufficient to determine whether:

(a) The sheriff has complied with the requirements of KRS 68.210;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee;

(d) The sheriff has complied with applicable statutory requirements relating to the management of public tax funds; and

(e) Situations or transactions indicate fraud, abuse, or other illegal acts.

(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:

(a) Extend audit steps and procedures to ascertain the effect on the sheriff's financial statement; and

(b) Issue a written report of ~~such~~ situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.

(4) An auditor shall:

(a) Determine the fund balance of sheriff's official tax account;

(b) Issue a written report on internal control structure, as required by "Government Auditing Standards";

(c) Separately identify reportable conditions, and those that are considered material weaknesses, in the report required by paragraph (b) of this subsection;

(d) Issue a written report on compliance with the requirements of statutes and administrative regulations specified by "Government Auditing Standards"; ~~and~~

~~(e) In reports required by paragraph (d) of this subsection, set forth:~~

~~1. All material compliance violations;~~

~~2. A statement of positive assurance concerning items actually tested; and~~

~~3. Negative assurance concerning items that were not tested].~~

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) The "Audit Guide for Sheriff's Tax Settlements".

(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements".

(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for Sheriff's Tax Settlements".

(4) An auditor shall express an overall opinion on whether the financial statement of a sheriff's tax settlement presents fairly the taxes charged, credited, and paid during the tax year.

(5) If an auditor is unable to express the opinion required by subsection (4) of this section, he shall state the reasons why.

(6) Financial statements included in an auditor's report shall be prepared on a cash basis.

(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements", and the auditing procedures shall comply with the "Compliance Auditing Considerations in Audits of ~~[Applicable to]~~ Governmental Entities and ~~[other]~~ Recipients of Governmental Financial Assistance", Statement on Auditing Standards ~~[in]~~ No. 74, issued by the American Institute of Certified Public Accountants. ~~[63, "Codification of Statements on Auditing Standards".]~~

(8)(a) The internal control structure of a sheriff's tax settlement shall be evaluated, and a report shall be prepared as provided by paragraph (b) of this subsection.

(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure In A Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".

(c) The report shall be prepared as provided by "Report on Internal Control Structure In Accordance With Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for Sheriff's Tax Settlements").

(9) An auditor's report shall include reports on other material findings.

(10) If statute ~~[law]~~ or administrative regulation prohibits the disclosure of information, an auditor's report shall state the:

(a) Nature of the information that has been omitted; and

(b) Statute ~~[Law]~~ or administrative regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for sheriff's tax settlement audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed in compliance with the standards and procedures required by this administrative regulation.

(2) A sheriff shall obtain written approval of an audit report ~~and~~ ~~workpapers~~ from the Auditor of Public Accounts prior to the:

(a) Release of an audit report; and

(b) Payment of fees for a sheriff's tax settlement audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Sheriff's Tax Settlements" and this regulation shall disqualify him from conducting sheriff's tax settlement audits.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Audit Guide for Sheriff's Tax Settlements", Auditor of Public Accounts, November 15, 1995;

(b) "Government Auditing Standards" issued by the Comptroller General of the United States, June, 1994; and

(c) "Codification of Statements on Auditing Standards", Numbers 1 through 73, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1995).

(d) "Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance", Statement on Auditing Standards, No. 74, issued by the American Institute of Certified Public Accountants (February 1995).

(2) These documents may be inspected, copied, or obtained at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

A. B. CHANDLER III, Auditor of Public Accounts

APPROVED BY AGENCY: December 11, 1995

FILED WITH LRC: December 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 26, 1996 at 1 p.m., at the Office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1996, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jeff Fryman, Office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7494, Fax - (502) 564-7741.

REGULATORY IMPACT ANALYSIS

Contact person: Jeff Fryman

(1) Type and number of entities affected: 119 county governments and 1 urban county government.

(2) Direct and indirect costs or savings on the governments: Total estimated costs are \$6,000 the first year. These costs are reimbursed to the APA from conducting approximately 120 audits of sheriff's tax settlements each fiscal year. The cost charged to a local government will not exceed \$50 the first year. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: No public comments were received addressing the cost of living and employment in the geographical area in which the administrative regulation will be implemented. The APA does not expect the nominal cost of \$50 per each local government to have any significant impact on the cost of living or employment in the geographical area in which the administrative regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received addressing the cost of doing business in the geographical area in which the administrative regulation will be implemented. The APA does not expect the nominal cost of \$50 per each local government to have any significant impact on the cost of doing business in the geographical area in which the administrative regulation will be implemented.

(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 new costs because each local government will be following the same compliance, reporting and paperwork requirements as in the past.

2. Second and subsequent years: No new costs because each local government will be following the same compliance, reporting and paperwork requirements as in the past.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is an initial cost of \$6,000 to produce the "Audit Guide for Sheriff's Tax Settlements" for APA staff the first year. These costs will be recovered from local governments. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

1. First year: \$6,000 cost to be recovered from local governments.

2. Continuing costs or savings: There may be nominal costs in producing audit guides for independent certified public accounts or additional staff members of the Auditor of Public Accounts.

3. Additional factors increasing or decreasing costs: Audit guides copied for independent certified public accounts are paid from general fund appropriations or fees charged to the independent certified public accountant.

(b) Reporting and paperwork requirements: The reporting requirements will not create additional training costs. The APA is required by "Government Auditing Standards" to provide 20 hours of government audit training to each staff auditor each year.

(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: Auditor of Public Account - appropriation and fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 43.075 requires the auditor to develop uniform standards and procedures for conducting, and uniform formats for reporting, audits of county budgets and the accounts, books and papers of elected county or district officials performed under KRS 43.070(1)(a) establishes uniform audit procedures and reporting standards.

(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: A detrimental effect would

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result on public health.

(c) If detrimental effect would result, explain detrimental effect: Generally accepted government auditing standards has the meaning specified in "Government Auditing Standards" issued by the Comptroller General of the United States. These standards are recognized as the basis for conducting government audits. These standards are also recognized by the "American Institute of Certified Public Accountants." Government audits may be recognized as substandard by other state agencies, independent certified public accountants, and attorneys, if "generally accepted government auditing standards" have not been followed.

(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? KRS 43.075 requires the auditor to develop uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county budgets and the accounts, books and papers of elected county or district officials performed under KRS 43.070(1)(a) establishes uniform audit procedures and reporting standards, therefore tiering is prohibited.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The office of the sheriff of each county government.

3. State the aspect or service of local government to which this administrative regulation relates. This will effect the annual audit of the sheriff's tax settlements.

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 (+/-): \$0

Expenditures (+/-): +Not to exceed \$50 per each local government.

Other Explanation: The costs of revising the audit guide, producing the audit guide, making copies of the guide for APA staff are included in the hourly rate charged by the APA to conduct these audits. Total estimated costs are \$6,000. These costs are reimbursed to the APA from conducting approximately 120 audits of sheriff's tax settlements each fiscal year. The cost charged to a local government will not exceed \$50 the first year. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

AUDITOR OF PUBLIC ACCOUNTS (Amendment)

45 KAR 1:040. Audits of county fee officials.

RELATES TO: KRS 43.070(1)(b), 43.075, 64.810

STATUTORY AUTHORITY: KRS 43.070(1)(b), 43.075, 64.810

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required by KRS 43.075 to develop uniform auditing standards, procedures, and formats for performing and reporting audits of elected county officials. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to

county fee officials audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States[~~July 1988~~].

Section 2. Auditing Standards. (1) The financial and compliance audit of the funds administered by each county fee official shall be conducted in accordance with:

(a) Generally accepted government auditing standards; and

(b) "Audit Guide for County Fee Officials".

(2) Financial statements shall be prepared on a cash basis.

~~(3)(a) The following documents are incorporated by reference:~~

~~1. "Audit Guide for County Fee Officials", Auditor of Public Accounts, August 15, 1991;~~

~~2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1988; and~~

~~3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).~~

~~(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2430 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.]~~

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of fee officials shall be an audit report that provides an opinion on whether the financial statements of fee officials present fairly, in all material respects, the receipts, disbursements, and excess fees arising from the cash transactions.

(2) An auditor shall make tests sufficient to determine whether:

(a) The fee officials have complied with the requirements of KRS 68.210 and 64.530;

(b) Receipts have been accurately recorded by source;

(c) Expenditures have been accurately recorded by payee;

(d) The fee officials have complied with applicable statutory requirements relating to the management of public funds; and

(e) Situations or transactions indicate fraud, abuse, or other illegal acts.

(3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:

(a) Extend audit steps and procedures to ascertain the effect on the official's financial statement; and

(b) Issue a written report of ~~such~~ situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.

(4) An auditor shall:

(a) Determine the fund balance of each official's accounts;

(b) Issue a written report on internal control structure, as required by "Government Auditing Standards";

(c) Separately identify reportable conditions, and those that are considered material weaknesses, in the reports required by paragraph (b) of this subsection;

(d) Issue a written report on compliance with the requirements of statutes and administrative regulations specified by "Government Auditing Standards"; ~~and~~

~~(e) In reports required by paragraph (d) of this subsection, set forth:~~

~~1. All material compliance violations;~~

~~2. A statement of positive assurance concerning items actually tested; and~~

~~3. Negative assurance concerning items that were not tested.]~~

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Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:

- (a) Generally accepted government auditing standards; and
- (b) The "Audit Guide for County Fee Officials".

(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for County Fee Officials".

(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for County Fee Officials".

(4) An auditor shall express an overall opinion on whether the financial statement of fee officials present fairly the receipts, disbursements, and excess fees arising from cash transactions.

(5) If an auditor is unable to express the opinion required by subsection (4) of this section, he shall state the reasons why.

(6) Financial statements included in an auditor's report shall be prepared on a cash basis.

(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for County Fee Officials", and the auditing procedures shall comply with the "Compliance Auditing Considerations in Audits of [Applicable to] Governmental Entities and [other] Recipients of Governmental Financial Assistance", Statement on Auditing Standards [in] No. 74, issued by the American Institute of Certified Public Accountants, [63, "Codification of Statements on Auditing Standards"].

(8)(a) The internal control structure of a fee official shall be evaluated, and a report shall be prepared as provided by paragraph (b) of this subsection.

(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure In A Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".

(c) The report shall be prepared as provided by "Report on Internal Control Structure In Accordance With Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for County Fee Officials").

(9) An auditor's report shall include reports on other material findings.

(10) If statute [law] or administrative regulation prohibits the disclosure of information, an auditor's report shall state the:

- (a) Nature of the information that has been omitted; and

(b) The statute [Law] or administrative regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fee official audits shall be allowable as reasonable and necessary expenses of a county fee official if the independent accountant's examination has been performed in compliance with the standards and procedures required by this administrative regulation.

(2) A fee official shall obtain written approval of an audit report [and workpapers] from the Auditor of Public Accounts prior to the:

- (a) Release of an audit report; and
- (b) Payment of fees for a fee officials' audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for County Fee Officials" and this regulation shall disqualify him from conducting fee officials audits.

Section 7. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Audit Guide for County Fee Officials", Auditor of Public Accounts, November 15, 1995;

(b) "Government Auditing Standards" issued by the Comptroller General of the United States, June, 1994; and

(c) "Codification of Statements on Auditing Standards", Numbers 1 through 73, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1995).

(d) "Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance", Statement on Auditing Standards, No. 74, issued by the American Institute of Certified Public Accountants (February 1995).

(2) These documents may be inspected, copied, or obtained at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

A. B. CHANDLER III, Auditor of Public Accounts

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 26, 1996 at 1 p.m., at the Office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1996, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jeff Fryman, Office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7494, Fax - (502) 564-7741.

REGULATORY IMPACT ANALYSIS

Contact person: Jeff Fryman

(1) Type and number of entities affected: 119 county governments and 1 urban county government.

(2) Direct and indirect costs or savings on the governments: Total estimated costs are \$6,000 the first year. These costs are reimbursed to the APA from conducting approximately 240 audits of county fee officials each calendar year. The cost charged to a local government will not exceed \$50 the first year. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received addressing the cost of living and employment in the geographical area in which the administrative regulation will be implemented. The APA does not expect the nominal cost of \$50 per each local government to have any significant impact on the cost of living or employment in the geographical area in which the administrative regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received addressing the cost of doing business in the geographical area in which the administrative regulation will be implemented. The APA does not expect the nominal cost of \$50 per each local government to have any significant impact on the cost of doing business in the geographical area in which the administrative regulation will be implemented.

(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 new costs because each local government will be following the same compliance, reporting and paperwork requirements as in the past.

2. Second and subsequent years: No new costs because each local government will be following the same compliance, reporting and paperwork requirements as in the past.

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(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There is an initial cost of \$6,000 to produce the "Audit Guide for County Fee Officials" for APA staff the first year. These costs will be recovered from local governments. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

1. First year: \$6,000 cost to be recovered from local governments.

2. Continuing costs or savings: There may be nominal costs in producing audit guides for independent certified public accounts or additional staff members of the Auditor of Public Accounts.

3. Additional factors increasing or decreasing costs: Audit guides copied for independent certified public accounts are paid from general fund appropriations or fees charged to the independent certified public accountant.

(b) Reporting and paperwork requirements: The reporting requirements will not create additional training costs. The APA is required by "Government Auditing Standards" to provide 20 hours of government audit training to each staff auditor each year.

(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: Auditor of Public Account - appropriation and fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 43.075 requires the auditor to develop uniform standards and procedures for conducting, and uniform formats for reporting, audits of county budgets and the accounts, books and papers of elected county or district officials performed under KRS 43.070(1)(a) establishes uniform audit procedures and reporting standards. Federal financial assistance received by a government entity is required to be audited in accordance with "Government Auditing Standards" issued by the Comptroller General of the United States, "The Single Audit Act of 1984" (31 USC 7501-7507), and "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985).

(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: A detrimental effect would result on public health.

(c) If detrimental effect would result, explain detrimental effect: Federal financial assistance received by a government entity is required to be audited in accordance with "Government Auditing Standards" issued by the Comptroller General of the United States, "The Single Audit Act of 1984" (31 USC 7501-7507), and "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985). If an audit of federal financial assistance is not conducted in accordance with these standards, a government entity may be required to return the federal financial assistance to the grantor agency. The grantor agency would rule a substandard audit had been completed. Generally accepted government auditing standards has the meaning specified in "Government Auditing Standards" issued by the Comptroller General of the United States. These standards are recognized as the basis for conducting government audits. These standards are also recognized by the "American Institute of Certified Public Accountants." Government audits may be recognized as substandard by other state agencies, independent certified public accountants, and attorneys, if "generally accepted government auditing standards" have not been followed.

(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? KRS 43.075 requires the auditor to develop uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county budgets and the accounts, books and papers of elected county or district officials performed under KRS 43.070(1)(a) establishes uniform audit procedures and reporting standards, therefore tiering is prohibited.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The office of the sheriff of each county government.

3. State the aspect or service of local government to which this administrative regulation relates. This will effect the annual audit of the sheriff's tax settlement.

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 (+/-): \$0

Expenditures (+/-): +Not to exceed \$50 per each local government.

Other Explanation: The costs of revising the audit guide, producing the audit guide, making copies of the guide for APA staff are included in the hourly rate charged by the APA to conduct these audits. Total estimated costs are \$6,000. These costs are reimbursed to the APA from conducting approximately 240 audits of county fee officials each calendar year. The cost charged to a local government will not exceed \$50 the first year. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

AUDITOR OF PUBLIC ACCOUNTS (Amendment)

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810, 31 USC 7501-7507, "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985)

STATUTORY AUTHORITY: KRS 43.070(1)(a), (2), (3), (4), 43.075, 64.810, 31 USC 7501-7507, "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985)

NECESSITY AND FUNCTION: The Auditor of Public Accounts is required by KRS 43.075 to develop uniform auditing standards, procedures, and formats for performing and reporting audits of county governments. This administrative regulation establishes the auditing standards, procedures and formats, and the interpretation of these items by the Auditor of Public Accounts, that shall be applied to fiscal court audits.

Section 1. Definitions. "Generally accepted government auditing standards" means, for reporting purposes, the "Government Auditing Standards" issued by the Comptroller General of the United States[~~July 1988~~].

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Section 2. Auditing Standards. (1) The financial and compliance audit of the funds contained in each county entity shall be conducted in accordance with:

- (a) Generally accepted government auditing standards;
 - (b) The Single Audit Act of 1984 (31 USC 7501-7507);
 - (c) "Audits of State and Local Governments", OMB Circular A-128; and
 - (d) "Audit Guide for Fiscal Court Audits".
- (2) Financial statements shall be prepared on a cash basis.
- ~~[(3)(a) The following documents are incorporated by reference:~~
- ~~1. "Audit Guide for Fiscal Court Audits", Auditor of Public Accounts, August 15, 1991;~~
 - ~~2. "Government Auditing Standards" issued by the Comptroller General of the United States, July, 1989; and~~
 - ~~3. "Codification of Statements on Auditing Standards", Numbers 1 through 64, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1991).~~
- ~~(b) These documents are available for public inspection and copying at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between the hours of 8 a.m. to 5 p.m.]~~

Section 3. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court present fairly, in all material respects, the:

- (a) Assets, liabilities, and fund balances arising from the cash transactions; and
 - (b) Cash receipts, cash disbursements, and changes in fund or cash balances.
- (2) An auditor shall make tests sufficient to determine whether:
- (a) The fiscal court has complied with the requirements of KRS 68.210;
 - (b) Receipts have been accurately recorded by source;
 - (c) Expenditures have been accurately recorded by payee;
 - (d) The county has complied with applicable statutory requirements relating to the management of public funds; and
 - (e) Situations or transactions indicate fraud, abuse, or other illegal acts.
- (3) If a situation or transaction indicates fraud, abuse, or other illegal act, an auditor shall:
- (a) Extend audit steps and procedures to ascertain the effect on the entity's financial statements; and
 - (b) Issue a written report of ~~[such]~~ situations and effects, as required by auditing standards incorporated by reference in this administrative regulation.
- (4) An auditor shall:
- (a) Determine the fund balance of each fund of a reporting entity;
 - (b) Issue written reports on Internal Control Structure, as required by:
1. 31 USC 7501-7507; and
 2. "Government Auditing Standards";
- (c) Separately identify reportable conditions, and those that are considered material weaknesses, in the reports required by paragraph (b) of this subsection;
- (d) Issue written reports on compliance with the requirements of statutes and administrative regulations specified by:
1. 31 USC 7501-7507, with regard to specific and general requirements; and
 2. "Government Auditing Standards";
- (e) In reports required by paragraph (d)1 of this subsection, set forth:
1. All compliance violations relating to federal financial assistance

programs, whether or not they are material;

2. A statement of positive assurance concerning items actually tested; and

3. Negative assurance concerning items that were not tested.

(f) In reports required by paragraph (d)2 of this subsection, set forth:

1. All material instances of noncompliance.

2. Immaterial instances of noncompliance violations will be reported to the county judge/executive and country treasurer by the auditor. If immaterial instances of noncompliance are repeated for two (2) audit years, these instances of immaterial noncompliances should be reported.

Section 5. Reporting Format. (1) An auditor's report shall state that the audit was conducted in accordance with:

- (a) The Single Audit Act of 1984 (31 USC 7501-7507);
- (b) "Audits of State and Local Governments", OMB Circular A-128; and
- (c) The "Audit Guide for Fiscal Court Audits".

(2) An auditor's report shall comply with the format specified in the "Sample Audit Report", in the "Audit Guide for Fiscal Court Audits".

(3) An auditor's report shall include, as applicable, documents listed in the "Sample Audit Report" of the "Audit Guide for Fiscal Court Audits".

(4) An auditor shall express an overall opinion on whether the financial statements of a fiscal court present fairly the:

- (a) Assets, liabilities, and fund balances arising from cash transactions; and
- (b) The cash receipts, cash disbursements, and changes in fund or cash balances.

(5) If an auditor is unable to express the opinion required by subsection (4) of this section, he shall state the reasons why.

(6) Financial statements included in an auditor's report shall be prepared on a cash basis.

(7) The "Report on Compliance with Laws and Regulations", required by the "Sample Audit Report", in the "Audit Guide for Fiscal Court Audits", and the auditing procedures shall comply with the "Compliance Auditing Considerations in Audits of ~~[Applicable to]~~ Governmental Entities and ~~[other]~~ Recipients of Governmental Financial Assistance", Statement on Auditing Standards ~~[in]~~ No. 74, issued by the American Institute of Certified Public Accountants, ~~[63, "Codification of Statements on Auditing Standards".]~~

(8)(a) The internal control structure of a fiscal court shall be evaluated, and reports shall be prepared as provided by paragraph (b) of this subsection.

(b) The evaluation shall be conducted as provided by "Consideration of the Internal Control Structure in a Financial Statement Audit", in No. 55, "Codification of Statements on Auditing Standards".

(c) The reports shall be prepared as provided by:

1. "Report on Internal Control Structure as Required by 31 USC 7501-7507" ("Sample Audit Report", in the "Audit Guide for Fiscal Court Audits"); and

2. "Report on Internal Control Structure In Accordance with Government Auditing Standards" ("Sample Audit Report", in the "Audit Guide for Fiscal Court Audits").

(9) An auditor's report shall include reports on other material findings.

(10) If statute ~~[law]~~ or administrative regulation prohibits the disclosure of information, an auditor's report shall state the:

- (a) Nature of the information that has been omitted; and
- (b) The statute ~~[Law]~~ or administrative regulation that prohibits disclosure.

Section 6. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examina-

tion has been performed in compliance with the standards and procedures required by this administrative regulation.

(2) A county shall obtain written approval of an audit report ~~and workpapers~~ from the Auditor of Public Accounts prior to the:

- (a) Release of an audit report; and
- (b) Payment of fees for a fiscal court audit report.

(3) Failure by an independent certified public accountant to comply with the "Audit Guide for Fiscal Court Audits" and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 7. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "Audit Guide for Fiscal Court Audits", Auditor of Public Accounts, November 15, 1995;

(b) "Government Auditing Standards" issued by the Comptroller General of the United States, June, 1994; and

(c) "Codification of Statements on Auditing Standards", Numbers 1 through 73, American Institute of Certified Public Accountants (Commerce Clearing House, Inc., January 1, 1995).

(d) "Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance", Statement on Auditing Standards, No. 74, issued by the American Institute of Certified Public Accountants (February 1995).

(2) These documents may be inspected, copied, or obtained at the office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

A. B. CHANDLER III, Auditor of Public Accounts

APPROVED BY AGENCY: December 14, 1995

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 26, 1996 at 1 p.m., at the Office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1996, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jeff Fryman, Office of the Auditor of Public Accounts, 2439 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7494, Fax - (502) 564-7741.

REGULATORY IMPACT ANALYSIS

Contact person: Jeff Fryman

(1) Type and number of entities affected: 119 county governments and 1 urban county government.

(2) Direct and indirect costs or savings on the governments: Total estimated costs are \$3,000 the first year. These costs are reimbursed to the APA from conducting approximately 120 audits of fiscal courts each fiscal year. The cost charged to a local government will not exceed \$25 the first year. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received addressing the cost of living and employment in the geographical area in which the administrative regulation will be implemented. The APA does not expect the nominal cost of \$25 per

each local government to have any significant impact on the cost of living or employment in the geographical area in which the administrative regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received addressing the cost of doing business in the geographical area in which the administrative regulation will be implemented. The APA does not expect the nominal cost of \$25 per each local government to have any significant impact on the cost of doing business in the geographical area in which the administrative regulation will be implemented.

(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 new costs because each local government will be following the same compliance, reporting and paperwork requirements as in the past.

2. Second and subsequent years: No new costs because each local government will be following the same compliance, reporting and paperwork requirements as in the past.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Total estimated costs are \$3,000 the first year. These costs will be paid by the APA from general fund appropriations. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement staff or independent certified public accountants.

1. First year: \$3,000

2. Continuing costs or savings: There may be nominal costs in producing audit guides for independent certified public accounts or additional staff members of the Auditor of Public Accounts.

3. Additional factors increasing or decreasing costs: none

(b) Reporting and paperwork requirements: The reporting requirements will not create additional training costs. The APA is required by "Government Auditing Standards" to provide 20 hours of government audit training to each staff auditor each year.

(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: Auditor of Public Account - appropriation and fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 43.075 requires the auditor to develop uniform standards and procedures for conducting, and uniform formats for reporting, audits of county budgets and the accounts, books and papers of elected county or district officials performed under KRS 43.070(1)(a) establishes uniform audit procedures and reporting standards. Federal financial assistance received by local governments is required to be audited in accordance with "Government Auditing Standards" issued by the Comptroller General of the United States, "The Single Audit Act of 1984" (31 USC 7501-7507), and "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985).

(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: A detrimental effect on public health would result.

(c) If detrimental effect would result, explain detrimental effect:

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Federal financial assistance received by a government entity is required to be audited in accordance with "Government Auditing Standards" issued by the Comptroller General of the United States, "The Single Audit Act of 1984" (31 USC 7501-7507), and "Audits of State and Local Governments", OMB Circular A-128 (Federal Register, Doc. 10877, May 3, 1985). If an audit of federal financial assistance is not conducted in accordance with these standards, a government entity may be required to return the federal financial assistance to the grantor agency. The grantor agency would rule a substandard audit had been completed. Generally accepted government auditing standards has the meaning specified in "Government Auditing Standards" issued by the Comptroller General of the United States. These standards are recognized as the basis for conducting government audits. These standards are also recognized by the "American Institute of Certified Public Accountants." Government audits may be recognized as substandard by bonding agencies, independent certified public accountants, and attorneys, if "generally accepted government auditing standards" have not been followed.

(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? KRS 43.075 requires the auditor to develop uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county budgets and the accounts, books and papers of elected county or district officials performed under KRS 43.070(1)(a) establishes uniform audit procedures and reporting standards, therefore tiering is prohibited.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The fiscal court of each county government.

3. State the aspect or service of local government to which this administrative regulation relates. This will effect the annual audits of fiscal courts.

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 (+/-): \$0

Expenditures (+/-): + Not to exceed \$25 per each local government.

Other Explanation: The costs of revising the audit guide, producing the audit guide, making copies of the guide for APA staff are included in the hourly rate charged by the APA to conduct these audits. Total estimated costs are \$3,000. These costs are reimbursed to the APA from conducting approximately 120 audits of fiscal courts each fiscal year. The cost charged to a local government will not exceed \$25 the first year. Second year costs are expected to be nominal; because the cost of reproducing the audit guide will be for additional or replacement APA staff.

PERSONNEL BOARD (Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111

STATUTORY AUTHORITY: KRS 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Conservation Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2312	Park Ranger Captain	12 months
2401	Police Communications Dispatcher	12 months
2403	Police Communications Dispatcher Senior	12 months
2404	Police Communications Dispatcher Coordinator	12 months
2405	Police Communications Dispatcher Supervisor	12 months
2408	MVE Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer	12 months
2493	Mounted Security Officer	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainee [Trainer]	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
3601	Alcoholic Beverage Enforcement Officer	12 months
3734	Assessment Conference Officer	12 months
5120	Student Development Trainee	12 months
5141	Vocational Rehabilitation [Education] Teacher Rank III	12 months
5142	Vocational Rehabilitation [Education] Teacher Rank II	12 months
5143	Vocational Rehabilitation [Education] Teacher Rank I	12 months
6248	Residential Facility Superintendent I	12 months
6250	Residential Facility Superintendent III	12 months
6252	Residential Facility Superintendent	

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II		12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months
<u>7250</u>	<u>Forest Ranger Technician</u>	<u>12 months</u>
<u>7251</u>	<u>Forest Ranger Technician Senior</u>	<u>12 months</u>
<u>7252</u>	<u>Forest Ranger Technician Chief</u>	<u>12 months</u>
<u>7253</u>	<u>Forest Ranger Technician District</u>	<u>12 months</u>
<u>7255</u>	<u>Forest Resource Advisor</u>	<u>12 months</u>
<u>7257</u>	<u>Forestry Fire Management Program Coordinator</u>	<u>12 months</u>
<u>7259</u>	<u>Forestry Resource Education Program Coordinator</u>	<u>12 months</u>
9859	Environmental Administrative Hearing Officer	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) When an employee is appointed to a position from a competitive register, such appointment shall be considered as an initial appointment.

(5) Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
5303	Exceptional Children Consultant I	12 months
5304	Exceptional Children Consultant II	12 months
5305	Exceptional Children Program Manager I	12 months
5306	Exceptional Children Program Manager II	12 months
5309	Education Academic Program Consultant I	12 months
5310	Education Academic Program Consultant II	12 months
5311	Education Academic Program Manager I	12 months
5312	Education Academic Program Manager II	12 months
5313	Education Administration Program Consultant I	12 months

5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months
5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months
5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months
5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an

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employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in service shall be reinstated with status. An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

TERRI KING SCHOBORG, Chairperson

APPROVED BY AGENCY: November 10, 1995

FILED WITH LRC: December 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1996, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1996, five days prior to the scheduled hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: R. Hanson Williams, Executive Director, Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, (502) 564-7830.

REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: This regulation affects all state agencies having probationary periods in excess of 6 months. The proposed amendment increases the probationary period from 6 months to 12 months for Forest Ranger Technicians, Forest Resource Advisor, Forestry Fire Management Program Coordinator, Forestry Resource Education Program Coordinator and Student Development Trainee.

(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. Cost of living and employment not affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments received. Cost of doing business not affected.

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

1. First year following implementation: Compliance does not result in increased reporting, paperwork or cost.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal savings may be achieved through delay in paying probationary increments.

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: The source of revenue is the cabinets' or agencies' budget for their employees.

(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. No economic impact.

(b) Kentucky: No public comments received. No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to retain the 6 month probationary period which would not provide an adequate period of time to train and evaluate employees before achieving status.

(8) Assessment of expected benefits: By increasing the initial probationary period to 12 months in these classifications, the affected agencies will be able to adequately train and evaluate employees before achieving status thus allowing the most qualified individuals to be placed into these classifications.

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

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect will result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied. This regulation must apply equally to all classified employees in all state agencies with classified employees.

FINANCE AND ADMINISTRATION CABINET Office of Financial Management and Economic Analysis (Amendment)

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

RELATES TO: KRS Chapter 103

STATUTORY AUTHORITY: KRS 103.286, 26 USC Sec. 146

NECESSITY AND FUNCTION: Pursuant to KRS 103.286, the Kentucky Private Activity Bond Allocation Committee shall attempt to allocate the state ceiling for the issuance of private activity bonds of Kentucky in order to foster economic development within the Commonwealth and promote the general welfare of its citizens and the public purposes of the Commonwealth. KRS 103.286 provides that the Secretary of the Finance and Administration Cabinet (as Chairman of the Kentucky Private Activity Bond Allocation Committee) shall promulgate administrative regulations in accordance with KRS Chapter 13A to provide for the allocation of the state ceiling for the issuance of private activity bonds among all issuers of such bonds

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within the Commonwealth of Kentucky. This administrative regulation establishes the formula by which state ceiling for the issuance of private activity bonds will be allocated.

Section 1. Definitions. For the purposes of this administrative regulation:

- (1) "Affected bonds" means "private activity bonds" as defined in the Internal Revenue Code of 1986, as amended by 26 USC sec. 146, et seq. (the "Code"), excluding any such obligations not subject to the state ceiling under the Code;
- (2) "Bonds" means bonds, notes and other like obligations;
- (3) "Committee" means the Kentucky Private Activity Bond Allocation Committee;
- (4) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;
- (5) "Issued" means delivered and paid for;
- (6) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency;
- (7) "Local project" means a project for which bonds are issued on behalf or for the benefit of an entity which is not a state agency;
- (8) "Single issuer pool" means the portion of the state ceiling from which allocations are made to any issuer;
- (9) "Staff" means the Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet.
- (10) "State ceiling" means the cap imposed by Section 146 of the Code on private activity bonds issued within the Commonwealth of Kentucky;
- (11) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency;
- (12) "State project" means a project for which bonds are issued on behalf or for the benefit of a state agency; and
- (13) "Year" shall mean calendar year.

Section 2. Allocation of State Ceiling for Private Activity Bonds.

(1) On January 1 of each year, the state ceiling for private activity bonds shall be divided into two (2) separate pools, a state issuer pool and a local issuer pool. Sixty (60) percent of the state ceiling shall be reserved for the local issuer pool and forty (40) percent shall be reserved for the state issuer pool. On and after July 1 of each year, any remaining unallocated portion of the state ceiling in the state issuer pool shall revert to the single issuer pool. On October 1 of each year, any remaining unallocated state ceiling in the local issuer pool shall revert to the single issuer pool. On and after October 1 of each year, any remaining unallocated portion of the single issuer pool shall be allocated on a first come, first-served basis, subject to the limitations of KRS 103.286(2)(a).

Section 3. Allocations For Local Projects. Prior to October 1 of any year the committee shall not allocate a portion of the state ceiling for any project in an aggregate principal amount greater than ten (10) percent of the amount of the local issuer pool.

Section 4. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling prior to October 1 shall be evaluated by the committee using the following criteria:

- (1) Creation of new jobs, as well as preservation of existing jobs, by the project;
- (2) Average salary per employee proposed for the project;
- (3) Capital investment in Kentucky being made as a result of the project;
- (4) Unemployment rate in the county of the project;
- (5) State economic development incentives awarded to the project, if any.

Section 5. Committee Meetings. The committee shall meet at least quarterly to allocate the state ceiling. Special meetings may be held on the call of the committee (chairman).

Section 6. Obtaining Confirmations in Advance-notice of Intent. The committee shall issue a confirmation allocating to the issuer a portion of the state ceiling equal to the amount of the bonds proposed to be issued. No affected bonds shall be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. A confirmation authorizing the issuance of affected bonds shall be obtained by the filing by or on behalf of the issuer with the committee of a written notice of intention to issue such bonds (the "notice of intent"). Confirmations shall be dated and numbered in the order issued.

Section 7. Notice of Issuance - Original Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of issuance by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued. The notice of issuance shall be transmitted by means the issuer may select, but shall be sent in time sufficient to allow the notice to reach committee by the close of business on the 90th ~~60th~~ day after the confirmation. If such period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 8. Subsequent Renewals - Thirty (30) Day Waiting Period. If the applicable bonds are not issued within such ninety (90) day period no new notice of intent for a project consisting of all or any part of the project described in any prior notice of intent may be filed until the expiration of thirty (30) days following the expiration of the last confirmation. If so filed, the confirmation issued upon such new notice of intent shall expire thirty (30) days after the date of such subsequent confirmation.

Section 9. Supplementary Confirmation for Excess Amounts Required. If the amount of affected bonds proposed to be issued is insufficient to pay the costs of the proposed project, an issuer may file with the committee a supplementary notice of intention to issue additional bonds. The committee shall confirm the supplementary notice of intention to issue bonds, if any, by a supplementary confirmation. The supplementary confirmation shall expire on the date of the confirmation that it supplements.

Section 10. Issuance of Bonds in Lesser Amounts than Confirmation - Eighty-five (85) Percent Requirement. A confirmation shall be effective as to affected bonds issued in amounts less than the confirmed amount, provided that the face amount of the bonds issued is not less than eighty-five (85) percent of the confirmed amount of the affected bonds. The issuer shall notify the committee if the bonds issued are within the limits expressed herein and the unused part of the allocation shall revert to the issuer pool from which the allocation was made, or to a single issuer pool after July 1 of any year.

Section 11. Elective Carry Forward. Any issuer may file with the committee by December 31, of each year, in which the state ceiling exceeds the aggregate amount of private activity bonds issued during the preceding calendar year, a "carry forward notice of intent" and a "carry forward election of unused private activity bond volume cap" (currently, U.S. Treasury Department Form 8328), for the carry forward to the next calendar year, for any purpose authorized by Section 146(f) of the Internal Revenue Code of 1986, of an unallocated portion of the state ceiling. The committee shall issue a carry forward confirmation confirming the notice and election to carry forward the unused portion of the state ceiling. Failure to file the carry forward notice and election forms by December 31, shall not

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adversely affect an issuer's right to carry forward under this section, provided such forms are filed with the committee within a reasonable time after December 31, of the preceding year, and, in any event, within a time frame acceptable to the Internal Revenue Service.

Section 12. Confirmations. No confirmations of notices of intent to issue affected bonds shall be issued by the committee after the total aggregate amount of bonds for which confirmations, including carry forward confirmations, issued during the year equals the state ceiling for that calendar year.

Section 13. Form and Manner. The forms for notices and confirmations required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation. No issuer shall file a notice of intent to issue affected bonds sooner than will reasonably permit issuance of the bonds within the time frame established by Section 7 of this administrative regulation, nor seeking an allocation of the state ceiling in excess of the amount reasonably required to pay the costs of the project to be financed through sale of the proposed bonds.

Section 14. Delegation of Functions. The committee will review and allocate all requests for state ceiling. No delegation of authority to make allocations of the state ceiling to staff shall be made except for in cases of surplus or carry-forward allocations for which the committee gives specific authority to staff. Such delegations of authority, including limits thereto, shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 15. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Notice of Intent" application (September 1995);
- (b) "Confirmation of Allocation of State Ceiling" (September 1995);
- (c) "Confirmation of Carry-forward Allocation of State Ceiling" (September 1995); and
- (d) "Notice of Issuance" (September 1995).

(2) Copies of the forms may be inspected, copied or obtained at the Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

REX HUNT, Deputy Secretary

APPROVED BY AGENCY: November 15, 1995

FILED WITH LRC: November 15, 1995 at 1 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on January 30, 1996 at 10 a.m. in the Capitol Annex Building, Room 386, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 25, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kim Blicht, Financial Analyst, Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, Phone: (502) 564-2924.

REGULATORY IMPACT ANALYSIS

Contact Person: Kim Blicht

(1) Type and number of entities affected: This regulation will affect the Kentucky Housing Corporation, the Kentucky Higher Education Student Loan Corporation, the Kentucky Infrastructure

Authority, the State Property and Building Commission, and local bond issuing entities in all Kentucky counties.

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

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

1. First year following implementation: Each local and state project requesting an allocation of the state ceiling will be required to provide the Kentucky Private Activity Bond Allocation Committee with the Notice of Issuance no later than the 90th day after the allocation of Private Activity Bond Cap.

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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No source of revenue to be used for implementation and enforcement of this administrative regulation is necessary. Existing funds will be used.

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

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: Technical correction to the regulation, there were no alternative methods.

(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: None

(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: 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: No

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GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

201 KAR 20:215. Contact hours, recordkeeping and reporting requirements for renewal of licensure.

RELATES TO: KRS 314.011(11), 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: For administration of the continuing education requirement, it is necessary for the board to develop procedures and standards.

Section 1. Individuals licensed under KRS Chapter 314 shall complete thirty (30) contact hours of continuing education activities from an approved provider during the earning period of November 1 through October 31 of their current licensure period.

(2) A minimum of two (2) contact hours of the thirty (30) hours shall be an HIV/AIDS education course approved by the Cabinet for Human Resources pursuant to 902 KAR 2:160.

(3)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) An individual attending continuing education activities, whether as a teacher, participant or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(4) It is the responsibility of the licensee to determine whether a continuing education activity is offered by an approved provider.

Section 2. The following categories of programs shall not qualify as approved continuing education activities regardless of who the provider is:

(1) Course content included in prelicensure nursing programs, except for licensed practical nurses enrolled in prelicensure registered nurse programs;

(2) Business meetings or committee meetings of organizations; and

(3) In-service and orientation to specific institutional policies and practices.

Section 3. (1)(a) A licensee or applicant for licensure by renewal shall maintain records to substantiate earned contact hours.

(b) Records shall include a certificate furnished by the provider.

(c) Records shall be retained for at least five (5) years following the earning period in which the contact hours were earned.

(2)(a) A licensee or applicant for licensure by renewal shall, upon request, furnish to the board or staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) A licensee or applicant for licensure by renewal who is determined to be in noncompliance with continuing education requirements shall be allowed to cure the noncompliance if he:

1. Meets continuing education requirements within ninety (90) days of notification of noncompliance;

2. Enters a consent decree with the board; and

3. Pays a civil penalty.

(b) The provisions of paragraph (a) of this subsection shall not apply to cases in which:

1. The licensee or applicant fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4) Cases described in subsection (3)(b) of this section shall be dealt with pursuant to the complaint procedures of 201 KAR 20:161.

Section 4. (1) Successful completion of postlicensure academic courses at a college, university or postsecondary vocational institution shall qualify as continuing education activities obtained from an approved provider if they are:

(a) Relevant to nursing practice; and

(b) Not excepted by Section 2 of this administrative regulation.

(2)(a) A copy of the transcript or grade reports shall be submitted upon request of the board.

(b) A description of the course from the school catalog or institution syllabus may be requested, as needed.

(3) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit equals fifteen (15) contact hours.

(b) One (1) quarter hour of academic credit equals twelve (12) contact hours.

(4) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee.

(b) An academic course applicable to nursing practice and appropriate for the nurse engaged in clinical practice, administration, education, or research and which is beyond the prelicensure curriculum of the individual licensee.

(5) A licensee may request course review for approval of applicable nursing content pursuant to Section 5 of this administrative regulation.

Section 5. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the earning period, he has:

(a) Requested the review by submitting an "Application for Individual Review"; and

(b) Paid a fee of ~~ten (10)~~ ~~[thirty-five (35)]~~ dollars.

(2) The review shall be based on the standards established by:

(a) This administrative regulation; and

(b) 201 KAR 20:220.

(3) Approval by the board of a nonapproved continuing education activity:

(a) Shall qualify it as obtained from an approved provider for the individual requesting the review; and

(b) Is limited to the particular offering upon which the request for individual review is based.

(4)(a) "Application for Individual Review (1992)" is incorporated by reference.

(b) It may be reviewed, inspected or copied at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, during regular business hours.

~~[Section 6. Current certification of advanced registered nurse practitioners as required by KRS 314.042 and 201 KAR 20:056 shall be accepted as documentation of compliance with continuing education requirements for renewal of the APRN's registered nurse license.]~~

MELDA S. LOGAN, President

APPROVED BY AGENCY: October 13, 1995

FILED WITH LRC: December 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 1996 at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 25, 1996, 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

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may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Approximately 50,000 ARNP's, RN's and LPN's.

(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: Minimal

2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged

(4) Assessment of anticipated effect on state and local revenues: Minimal

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

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

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

(b) Kentucky: N/A

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

(8) Assessment of expected benefits: Lower cost to affected nurses.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect:

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

(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? N/A

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

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

RELATES TO: KRS 314.041(5), 314.042(3), (6), 314.051(3), 314.071(1), (2), 314.073(4), (6), 314.161

STATUTORY AUTHORITY: KRS 314.131

NECESSITY AND FUNCTION: To establish fees to carry out the provisions of KRS Chapter 314.

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect fees for applications for licensure or for registration, and for renewal or reinstatement thereof.

(2) The fees ~~[shall not exceed the amounts indicated]~~ for the following applications shall be as follows:

(a) Licensure as a registered nurse - seventy (70) dollars.

(b) Licensure as a licensed practical nurse - seventy (70) dollars.

(c) Biennial renewal of active license - forty-five (45) ~~[fifty (50)]~~ dollars.

(d) Biennial renewal of inactive license - thirty-five (35) dollars.

(e) Reinstatement of license - seventy (70) dollars.

(f) Active to inactive license status - thirty-five (35) dollars.

(g) Inactive to active license status - forty-five (45) ~~[fifty (50)]~~ dollars.

(h) Endorsement verification of Kentucky licensure or registration - twenty (20) dollars.

(i) Duplicate license or registration card or letter - twenty (20) dollars.

(j) Registration as an advanced registered nurse practitioner - seventy (70) dollars.

(k) Biennial renewal of registration as an advanced registered nurse practitioner - forty-five (45) ~~[fifty (50)]~~ dollars.

(l) Reinstatement of registration as an advanced registered nurse practitioner - seventy (70) dollars.

(3) An application shall not be evaluated unless current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The board shall collect fees for applications for approval of providers of continuing education and for renewal or reinstatement thereof, which shall be as follows: ~~[not to exceed the following amounts:]~~

(1) Initial provider approval - \$100.

(2) Reinstatement of provider approval - \$100.

(3) Biennial renewal of approval - fifty (50) ~~[seventy-five (75)]~~ dollars.

(4) Individual review of continuing education offerings - ten (10) ~~[thirty-five (35)]~~ dollars.

Section 3. Fees for Services. (1) The board shall collect fees for the following services which shall be as follows: ~~[not to exceed the amounts indicated:]~~

(a) Applicants for licensure who are retaking the examination - thirty (30) ~~[sixty (60)]~~ dollars.

(b) Verification of licensure or registration letter - five (5) ~~[ten (10)]~~ dollars.

(c) Copy of examination results or transcripts - five (5) ~~[ten (10)]~~ dollars.

(d) Nursing certificate (optional) - thirty (30) dollars.

(2) The fee for copies of statutes, administrative regulations, and duplicated or printed materials shall be one (1) dollar minimum or shall be fifteen (15) ~~[not exceed twenty-five (25)]~~ cents per page.

(3) An applicant for licensure who takes or retakes the licensure examination shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board

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application for licensure and retake fees pursuant to subsection (5) of this section.

(4) A nurse who is licensed in another state, United States territory or country and who submits an application for licensure in Kentucky as a registered nurse or a licensed practical nurse, but who is required to take or retake the licensure examination, shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and retake fees.

(5) Applicants retaking the licensure examination shall:

(a) Submit fee for retake prior to each time examination is taken; and

(b) Submit new application and current fees if more than one (1) year has passed since the date the applicant was declared eligible to take the examination initially.

(6) Graduates of foreign schools of nursing shall assume responsibility for costs incurred to submit credentials translated into English, commission on graduates of foreign nursing schools certificates, immigration documents and other documents needed to verify meeting licensure requirements.

Section 4. With the exception as stated in Section 3(5)(b) of this administrative regulation, an application which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure or registration shall be issued the appropriate approval, license or registration without additional fee.

Section 6. Refunds. ~~[(1) Current administration of examination fee on file for an examination candidate unable to be present for the administration of an examination due to unusual circumstances such as weather conditions, accidents, illness, family circumstances, shall be refunded upon submission of written request by candidate.~~

~~[(2)]~~ Overpayment of five (5) dollars or more of current fee shall be refunded upon submission of written request by payer.

Section 7. A partial application fee may be held on record for one (1) year and shall be applied toward the fee to meet the requirements for licensure or registration.

Section 8. Fees properly collected by the board shall not be refunded, except as provided in Section 6 of this administrative regulation.

MELDA S. LOGAN, President

APPROVED BY AGENCY: October 13, 1995

FILED WITH LRC: December 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 1996, at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 25, 1996, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman, General Counsel

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

1. First year following implementation: Minimal

2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged

(4) Assessment of anticipated effect on state and local revenues: Minimal

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

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

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

(b) Kentucky: N/A

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

(8) Assessment of expected benefits: Lower cost to affected nurses.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect:

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

(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? N/A

DEPARTMENT OF AGRICULTURE

Division of Pesticides

(Amendment)

302 KAR 31:025. Commercial structural pest control and fumigation.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY AND FUNCTION: KRS 217B.050 requires the Department of Agriculture to adopt rules and administrative regulations relating to the use and application of pesticides. This administrative regulation sets forth requirements applicable to commercial structural pest control and fumigation.

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Section 1. Applicability. No person shall engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:

- (1) Commercial structural pest control applicator;
- (2) Commercial structural pest control manager;
- (3) Commercial structural fumigation applicator; or
- (4) Commercial structural fumigation manager.

Section 2. License Application. (1) All applications for applicator or manager licenses shall contain the following:

- (a) Name and address;
 - (b) Date of birth;
 - (c) Social security number;
 - (d) Photograph;
 - (e) A statement that the applicant has never been convicted of fraud or misrepresentation;
 - (f) Home telephone number;
 - (g) Written verification of pesticide work experience; and
 - (h) College transcripts where applicable.
- (2) All applicants for applicator or manager examinations shall be sworn to and notarized.

(3) All applicants for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.

(4) Manager license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.

(5) The manager's license examination shall be timed and shall be completed within two (2) hours.

(6) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.

(2) Failure to submit by July 1 of each year a completed renewal registration form along with a fee of \$100 for each place of business maintained in Kentucky shall result in the lapse of said license.

(3) Any license holder who fails to submit a completed renewal registration form and the required fee by July 1 of each year, or whose license has been suspended or revoked, shall be required to take and pass a manager or applicator licensing examination before a new license may be issued.

(4) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:

- (a) Name, address, and home telephone number;
- (b) Social security number; and
- (c) Job title.

(5) Within thirty (30) days of the addition or termination of an employee, the company must submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall be required to notify the department of any change of address within ten (10) days after such change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following minimum standards shall apply:

(1) Treatment measures taken for the preventative control of wood-destroying organisms shall be based upon the types of wood-destroying organisms determined to be present in the structure by an inspection. Treatment for the prevention of wood-destroying organisms shall be based on conditions conducive to infestation, relation to neighboring infestation or by the request of the customer.

(2) Termite treatment measures. The following standards shall apply to the treatment of all structures for the control or prevention of subterranean termite infestations.

(a) Remove loose cellulose debris of such size as can be raked from beneath structures;

(b) Remove all accessible termite tubes;

(c) In structures with a crawl space, the applicator shall trench or rod to apply registered termiticide to the soil adjacent to the inside and outside of foundation walls, piers, chimneys and other supports. The soil adjacent to the outside of structures built on concrete slabs and structures with basements shall be treated with a registered termiticide by trenching or rodding;

(d) Drill vertically (at maximum of eighteen (18) inch intervals) or horizontally rod and treat all porches, stoops, concrete slabs, patios, driveways, or other structures which obstruct trenching or rodding of the soil adjacent to the foundation;

(e) In treating structures on a concrete slab on the ground, expansion joints along exterior walls, the soil around pipes passing through the slab, bath traps, the soil beneath partition walls that traverse visible expansion joints or cracks and other critical termite entry points which may allow damage to the structure shall be treated with a registered termiticide by drilling and treating from above or by rodding beneath the slab at no more than eighteen (18) inch intervals. Interior perimeters of monolithic slabs need not be treated, except in the case of visible cracks or other potential entry points;

(f) All of the above standards shall apply to the treatment of structures with basements having poured concrete floors. Poured concrete floors shall be treated according to the standards established for concrete slabs unless expressly prohibited by the property owner or his authorized representative in writing;

(g) All exceptions to the standards shall be noted in writing on the contract and signed by the property owner or his authorized representative and the company representative. Such signatures shall be made in the immediate location of the description of the exceptions and shall be made at the time the contract is written or when treatment is made. The graph of the structure shall reflect exceptions noted on the contract. Reasons for exceptions may include, but are not limited to, gas lines under slabs, presence of wells or cisterns, risk of contamination, heating systems under slabs, substandard structures or drilling poured concrete slab basement floors.

When alternative subterranean termite measures are used which will result in exceptions to the standards, the graph of the structure shall reflect the type of treatment made. Such exceptions may be, but are not limited to, termiticide foam applications, termite baits, topical wood treatments and wood injection. All such treatments shall be made in accordance with recommendations on the registered pesticide label.

(h) Pretreatment of new construction shall be carried out in accordance with label recommendations of the chemical used. No registered termiticide shall be applied at less than label recommended concentration.

(i) The selection and use of termiticides or any other chemical used for control of wood-destroying organisms shall be in accordance with recommendations on the pesticide label. No termiticide shall be applied at less than label recommended concentration. [The following minimum standards shall apply to the treatment of all structures for the control or prevention of termite infestations:

(a) Remove cellulose debris from beneath structures;

(b) Remove all accessible termite tubes from foundation walls, piers and supports;

(c) In structures with a crawl space, the applicator shall trench, rod or flood to apply approved termiticides to the soil adjacent to the inside and outside of foundation walls, piers and chimneys and other supports. The soil adjacent to the outside of structures with basements and supported slabs shall be treated with an approved termiticide by trenching and/or rodding;

(d) Drill and flood (at not more than eight (8) inch intervals) the

~~cavities in hollow pillars, tile brick, concrete block, other building materials that have cavities, chimneys or any other structures likely to be penetrated by termites by injecting an approved termiticide in accordance with that pesticide's registered labeling. Drilling and flooding should be done above the top of the outside grade level where possible. If foundation walls are uncapped, flooding from the top is acceptable. Rubble stone foundations should be drilled and flooded at intervals of not more than sixteen (16) inches, where possible;~~

~~(e) Void, drill (at maximum of eighteen (18) inch intervals) or rod and treat structures, stoops, concrete slabs, patios or driveways that obstruct trenching or rodding of the soil adjacent to the foundation;~~

~~(f) In treating structures on a concrete slab on the ground, the soil beneath plumbing, pipes, passing through the slab, bath trap, expansion joints and other like termite entry points shall be saturated with an approved termiticide by drilling, if necessary, and treating from above or by rodding beneath the slab at no more than eighteen (18) inch intervals;~~

~~(g) All the above standards apply to the treatment of structures with finished basements that have poured concrete floors. Poured concrete floors shall be treated according to the standards established for concrete slabs unless the applicator is expressly prohibited by the owner in writing from drilling the poured concrete floor;~~

~~(h) The selection and use of termiticides or any other chemicals used for control of wood-destroying organisms shall be in accordance with label instructions approved by the United States Environmental Protection Agency and registered with the department; and~~

~~(i) Pretreatment of new construction will be carried out in accordance with the registered label instructions of the chemical used;~~

(3) Powderpost and old house borer treatment measures:

(a) No treatment for the control of powderpost beetle, old house borer infestations, or both shall be made for any structure unless actual notice of the proposed treatment is given to the department at least three (3) days prior to the start of treatment. Actual notice may be given by telephone provided that written confirmation is post-marked within one (1) day of the telephone call;

(b) Treatment for the control of powderpost beetle ~~and/or~~ old house borer infestations may be performed by spraying or painting infested areas with a pesticide labeled for their control; and

(c) Fumigation by licensed fumigators may be used to control powderpost beetle and/or old house borer infestations where other control measures have failed or are inappropriate.

(4) Requirements for prevention and control of wood-destroying fungi. The following are the minimum requirements for control of wood-destroying fungi in crawl space areas of buildings after the buildings have been constructed:

(a) Determine moisture content of joists, sills and subfloor at least six (6) points in the building. Where moisture content readings above twenty (20) percent are obtained, determine the source of moisture. Wood which has been discolored by stain or mold fungi shall not be treated for decay fungi if its moisture content is less than twenty (20) percent.

(b) Where excess dampness from the soil under a building contributes to high moisture readings, the applicator shall install a vapor barrier over approximately seventy (70) percent of the soil; or install additional ventilation so that there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier, or install vents to give cross ventilation with a vapor barrier; or improve drainage; or waterproof the foundations. One (1) or more of these measures shall be used as appropriate.

(c) The only situation where surface application of fungicides may be used in the control of existing decay problems is when rapid kill of surface fungi is requested. In such instances, moisture control techniques must be used in combination with chemical treatment.]

Section 6. Wood-destroying Organism Reports. All persons

holding a commercial structural pest control applicator's license shall be required to submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report. Reports shall be made on a form prescribed and supplied by the department and received not later than the 15th of the month following treatment. All reports shall be signed by the licensed applicator for that company. Upon performance of treatment for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be at the least a triplicate contract, one (1) copy being issued to the property owner, one (1) copy retained by the company and one (1) copy filed with the department at the time of the monthly wood-destroying organism report. All contracts issued shall be accompanied by a graph showing areas of damage, if any, and location and type of treatment made. In the case of substandard treatments, it shall be so noted on the contract with reasons as to why the job is substandard.

Section 7. Inspections by the Department. At such times as he may deem desirable the commissioner or his authorized representative shall examine properties treated for the purpose of determining the efficiency of the treatment given. Whenever unsatisfactory or substandard treatments are found, the license holder will be notified and given a reasonable length of time in which to correct such conditions. If the license holder shall neglect or refuse to make such corrections, his license will be suspended as provided for by law, unless he can show to the satisfaction of the Department of Agriculture why such action should not be taken. While his license is suspended for this cause, the license holder shall have the privilege of retreating all properties on which he has current contracts but shall not solicit any new business. He shall notify the Department of Agriculture of the dates of all reexaminations and retreatments. When all properties previously reported in unsatisfactory condition have been reexamined and retreated the Department of Agriculture shall then make the reinspections at its earliest convenience. If the Department of Agriculture, on reinspection, shall find all the properties in satisfactory condition, the suspension shall be removed, otherwise, the license shall be permanently revoked. A license may be suspended or revoked for gross neglect of contracts and general failure to give satisfactory service.

Section 8. Rodent Control. Since most rodenticides are poisonous to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 9. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants; and no fumigation operation shall be conducted unless and until at least two (2) individuals shall work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation. Each license or certification holder, before performing general fumigation in any structure or enclosed space, must notify, in writing, the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed. This written information must be given to each fire department and police department no later than three (3) hours prior to the time set forth in the notice for the release of the fumigant. A shorter time for filing written notice of fumigation of vessels, aircraft, box cars, truck and/or common carriers shall be permitted, and the time for such notification shall only be in advance of the fumigating operation. Such notice shall in each and every case give the following information:

(a) Location of structure or enclosed space to be fumigated as well as its character and use;

- (b) The fumigant to be used;
 (c) The date and time of release of fumigant and approximate exposure period; and
 (d) The name of the operator in charge, together with his day and night telephone numbers.

(3) If trucks, box cars, and/or other common carriers are in transit during the fumigation operation, the carrier and the receiver must be notified that fumigation stated in this section has taken place. Other than the aforementioned carriers, this section shall not apply to spot fumigation.

(4) Structures to be vacant. Neither the structure to be fumigated, nor any part or parts thereof, shall be occupied by human beings or domestic animals during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation. It shall be the duty of the operator in charge, himself, to make a careful examination of all parts of the structure to be fumigated, and structures or enclosed spaces physically joined to or in contact with said structure, to verify that no human beings or domestic animals have remained therein, and that all necessary precautions have been undertaken to safeguard the lives and health of all persons occupying structures or enclosed spaces adjoining the structure in which fumigation operation is to be performed. For the purpose of this section, "operator in charge" means a person certified to apply fumigants and charged with the duty of overseeing the fumigation operation.

(5) Notice of warning must be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation, by leaving said notice with a responsible person therein and if not present, by attaching same in a conspicuous manner on the entrance or entrances of such structures or enclosed space occupied by human beings.

(6) The operator in charge must make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs. Prior to releasing the fumigant, suitable warning signs must be posted at the ground level on all doors or entrances as follows:

(Skull and Crossbones)	Danger fumigation with (Name of Fumigant) Deadly Poison	(Skull and Crossbones)
All persons are warned to keep away		

Name of Fumigator _____
 Address _____ Telephone _____
 Operator in charge _____
 Day Phone _____ Night Phone _____

Such signs must be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters in proportion.

(8) Final prefumigation inspection. Immediately before the fumigant is to be released, the operator in charge must then make a final inspection and shall ascertain, himself, the following:

- (a) That all preparations have been completed;
 (b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;
 (c) That no open fires or open flames, pilot lights or oil lamps are burning;
 (d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and

(e) That all doors, windows and all other means of access have been locked, barred or guarded. All doors or other entrances which can be opened from the outside must be locked.

(9) Guards and watchmen. During the period of fumigation, and until the structure has been ventilated and declared safe, a capable, alert watchman, or guard, or watchmen and guards, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen. It shall be the duty of said individual(s) to prevent the entrance of unauthorized personnel into said structure or enclosed space during the exposure period and while the structure or enclosed space is being ventilated after the exposure period. For the purpose of this subsection, "unauthorized personnel" shall mean any individual or individuals not belonging to or a part of the fumigating crew performing the fumigation operation. Spot fumigation does not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. If a warning agent is used, the above subsection does not apply, unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This does not relieve the operator in charge from the duty to comply with all other safety precautions and requirements.

(12) The following pesticides shall not be considered fumigants:

- (a) Paradichlorobenzene;
 (b) Naphthalene; and
 (c) Calcium cyanide used as labeled to kill rodents in their burrows.

(13) The following procedures shall not be considered fumigation operations where nonrestricted use pesticides are used according to label directions:

- (a) Aerosol dispersions; and
 (b) Any equipment or device which produces a fog, smoke, or mist.

Section 10. Termite, General Pest, and Fumigation Licenses. (1) Persons holding termite, general pest, or fumigation licenses issued under the now-repealed sections of KRS Chapter 249, and renewed under Section 3 of this administrative regulation, may continue to do business in those categories of pest control for which they were licensed under KRS Chapter 249. That is, a person holding a termite license or renewal may treat buildings for wood-destroying organisms, a person holding a general pest license or renewal may continue to treat for general pests, and a person holding a fumigation license or renewal may treat for pests using poison gas. A termite, general pest, or fumigation license issued under KRS Chapter 249 and renewed under Section 3 of this administrative regulation is not a manager's or applicator's license and does not entitle the holder to engage in business in all the categories that a manager or applicator may engage in business.

(2) Licenses issued under KRS Chapter 249 must be renewed under Section 3 of this administrative regulation by June 30 of each year and are subject to all the terms and conditions of other licenses issued under this administrative regulation. A license issued under KRS Chapter 249 and renewed under Section 3 may be modified, suspended, or revoked for the same reasons, and using the same procedures that a manager's or applicator's license may be modified, suspended or revoked. A person holding a license issued under KRS Chapter 249 and renewed under Section 3 of this administrative

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regulation must meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by statute and by 302 KAR 31:005 for persons licensed as applicators or managers.

(3) A person licensed under KRS Chapter 249 for termite, fumigation, or general pest control is, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides, as a matter of state law. This does not relieve persons holding termite, fumigation, or general pest control licenses from obtaining certification under the federal law as contained in the Federal Insecticides, Fungicide, and Rodenticide Act of 1972 as amended. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 31:005. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 31:015.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: December 15, 1995

FILED WITH LRC: December 15, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Tuesday, January 23, 1996 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, January 18, 1996 five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna Greenwell Dutton, General Counsel

(1) Type and number of entities affected: All persons who purchase, use, or apply restricted use pesticides.

(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 requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These changes are the most current minimum standards for termite treatments.

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

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

(a) Necessity of proposed regulation if in conflict: 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? (Explain why tiering was or was not used) No. All persons who purchase, use, or apply restricted use pesticides will be treated the same.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (Amendment)

415 KAR 1:114. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130

STATUTORY AUTHORITY: KRS 224.60-130

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

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

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

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

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

(4) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed

corrective action plans, and implementation of corrective action plans approved by the cabinet.

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

(6) "Cabinet" is defined by KRS 224.60-115(2) [as used in this administrative regulation means the Cabinet for Natural Resources and Environmental Protection unless specified otherwise].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Experience Requirements. (1) An applicant shall demonstrate participation in, as defined in Section 1(4) of this administrative regulation, the performance of corrective action at a

minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

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

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

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

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

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

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

(b) Applicable occupational health and safety and public health and safety requirements - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to applicable occupational health and safety and public health and safety requirements; and

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

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

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

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

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

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

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

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

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

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

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

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

(d) Fails to maintain a professional registration.

(4) An applicant denied the opportunity to take the certification

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test or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

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

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

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

Section 7. Revocation or Suspension of Certification. (1) A certificate issued pursuant to this administrative regulation may be suspended or revoked by the commission if the certified contractor:

(a) ~~[(4)]~~ Negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required federal, state or local regulation, code or standard relating to corrective action; or

(b) ~~[(2)]~~ Recklessly or intentionally caused or permitted a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet; or

(c) ~~[(3)]~~ Obtained the certification through fraud or misrepresentation; or

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

(2) The commission shall address the charges specified in subsection (1)(a) through (d) of this section against a certified contractor. The commission vote on issues of suspension or revocation shall be in open session and require a simple majority of those commission members voting. The commission shall then cause a letter to be issued notifying the certified individual of the commission's action.

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

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

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

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

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

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

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

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

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

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

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

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

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

LAURENCE W. McCABE III, Executive Director

APPROVED BY AGENCY: December 7, 1995

FILED WITH LRC: December 7, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1996, at 2 p.m. at the Petroleum Storage Tank Commission, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 19, 1996, 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

Contact Person: David B. Wicker, Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981.

REGULATORY IMPACT ANALYSIS

Agency Contact: David Wicker

(1) Type and number of entities affected: The proposed amended regulation will affect approximately 400 contractors in the Commonwealth of Kentucky who perform corrective action due to releases from petroleum storage tanks.

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

1. Effect on cost of living and employment: None

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

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

4. Continuing costs or savings: There will be a continuing cost due to the need to apply annually for renewal of the certification. The amendments will lower the cost to the petroleum storage tank owner

or operator by not requiring the certified individual to be present for all aspects of corrective action.

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

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

(2) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

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

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

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

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

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

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

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

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

Alternative:

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

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

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

(6) Economic impact: None

(7) Benefits of the regulation: The regulation in its amended form saves both the petroleum storage tank owner and the commission the expense of paying for a certified contractor to be on site at all time, when that sort of supervision is not always needed. The amended regulation specifically state that all cost must be necessary and

reasonable. In addition, the amended regulation provides a procedure to remove or suspend a certification under certain circumstances, thus assuring the public that only qualified individuals can retain certification.

(8) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: This regulation overlaps and supplements 815 KAR 30:060, Underground petroleum storage tank installer/remover certification regulation of the State Fire Marshal. This amendment will not effect the Fire Marshal's regulation.

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

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

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

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. This regulation applies to all individuals and companies contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

DEPARTMENT OF CORRECTIONS

Division of Local Facilities

(Amendment)

501 KAR 3:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth definitions.

Section 1. Definitions. (1) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, regional jail authority, city or urban county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(3) "Jail staff" means deputy jailers, and other personnel involved

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in the supervision, custody, care or treatment of prisoners in the jail.

(4) "Inmate" means any person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:

- (a) Charged with or convicted of an offense;
- (b) Held for extradition or as a material witness; or
- (c) Confined for any reason.

(5) "Department" means the Department of Corrections.

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(8) "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.

(9) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(10) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.

(11) "Dormitory" means an area equipped for housing not less than three (3) persons or more than thirty-six (36) ~~sixteen (16)~~ persons.

(12) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(13) "Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(14) "Sallyport" means a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the jail intake area.

(15) "Penal type" means furnishings approved by the Department of Corrections.

(16) "Deck" means the secure overhead area of the jail which is part of the security perimeter.

(17) "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Amendment)

501 KAR 3:020. Administration; management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures to be followed for the administration and management of jails.

Section 1. Policy and Procedure - Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Department of Corrections.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include but not be limited to the

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following aspects of the jail's operation:

- (a) Administration.
- (b) Fiscal management.
- (c) Personnel.
- (d) Security and control.
- (e) Sanitation and management.
- (f) Medical services.
- (g) Food services.
- (h) Emergency and safety procedures.
- (i) Classification.
- (j) Inmate programs.
- (k) Inmate services.
- (l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Department of Corrections.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer when the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials.

Section 3. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and inmates shall have access to the procedures.

(2) With the consent of the inmate, news media shall be permitted to interview any inmate as set forth in the jail's policy and procedure manual except when the safety and security of the jail is affected.

(3) Written policy and procedure shall set forth the time and length allowable for inmate interviews.

(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.

(5) Release of inmate information shall include the following:

(a) All requests for information shall be addressed to the jailer;
(b) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the inmate; and

(c) Private citizens shall only be provided with information supplied to the media.

(6) No information shall be released that is detrimental to another inmate.

Section 4. Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(1) Jail information and inmate records shall be retained in written form or within computer records.

(2) Jail information and inmate records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time an inmate record shall be maintained after an inmate's release from custody and the conditions under which archives are maintained.

(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include but not be limited to:

- (a) Death of an inmate.
- (b) Attempted suicide or suicide.
- (c) Serious injury, whether accidental or self-inflicted.
- (d) Attempted escape or escape from confinement.

(e) Fire.

(f) Riot.

(g) Battery, whether by a staff member or inmate.

(h) Sexual assaults.

(i) Occurrence of contagious or infectious disease, or illness within the facility.

(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 202A or inmates known to be or suspected to be mentally ill or mentally retarded.

(4) All jails shall keep a log of daily activity within the jail.

(5) Each jail shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 5. Inmate Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each inmate. Other information retained in each inmate's jail record shall include but not be limited to:

(a) Court orders.

(b) Personal property receipts.

(c) Infraction reports.

(d) Reports of disciplinary actions.

(e) Work record and program involvement.

(f) Unusual occurrences and in the case of death of an inmate, disposition of the inmate's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 3:090.

(3) The jailer shall ensure that inmate records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that inmates sign a "Release of Information Consent Form" prior to the release of information, other than public information, to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the inmate's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.

(b) Name of facility releasing information.

(c) Specific information to be disclosed.

(d) Purpose of the information.

(e) Date consent form is signed.

(f) Signature of inmate.

(g) Signature of employee witnessing the inmate's signature.

(5) Juvenile jail records shall be kept separate from adult jail records and shall be made available for examination only as provided in KRS 208.340. Upon an order of expungement pursuant to KRS 208.275, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

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REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS

Division of Local Facilities

(Amendment)

501 KAR 3:050. Physical plant.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth standards and procedures to be followed in the design and construction of jails.

Section 1. Purpose. The purpose of this administrative regulation is to provide minimum standards for the renovation or construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.055, 441.064, and 441.075, and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Department of Corrections shall provide for any county government which wishes to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them concerning:

(1) Site selection.

(2) Probable need as it relates to capacity and types of inmates to be housed.

(3) Sources of financing for constructing.

(4) Laws and administrative regulations relating to treatment of inmates.

(5) Laws and administrative regulations relating to facilities for inmates.

(6) Sources of revenue for operations of the jail.

(7) Probable cost for operation of the jail.

(8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No jail shall be built without site acceptance by the Department of Corrections. The following criteria shall be considered in site selection:

(1) Size.

(2) Proximity to courts.

(3) Proximity to community resources.

(4) Availability of public transportation.

(5) Environmental health.

(6) Adequate parking.

(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the Department of Corrections for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

(1) A programming phase containing a(n):

(a) Evaluation of existing facility;

(b) Population analysis;

(c) Space requirements based on population analysis and standards for the facility and site outlined in the Kentucky Minimum Standards for Local Jails;

(d) Staffing analysis;

(e) Cost analysis to include construction and operation costs;

(f) Financing alternatives, if applicable;

(g) Design-construction time schedule; and

(h) Summary and recommendations; and

(i) Information concerning the programming phase shall only be submitted:

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1. On major renovation or new construction; and
 2. For information review purposes.
- (2) A schematic phase containing:
- (a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;
 - (b) Scale drawings of the site, locating the building, parking and other facilities - one (1) inch equals fifty (50) feet;
 - (c) Documentation of site as to:
 1. Size;
 2. Proximity to courts;
 3. Proximity to community resources;
 4. Availability of public transportation;
 5. Environmental health;
 6. Adequate parking; and
 7. Provisions of future expansion.
 - (d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;
 - (e) Scale elevation drawings of all exterior walls;
 - (f) Schematic cost estimate to include revised construction and operation costs; and
 - (g) A revised design-construction time schedule.
- (3) A design development phase containing:
- (a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
 - (b) All necessary construction drawings including construction details;
 - (c) Specifications for all materials and workmanship;
 - (d) A proposed contract with general and special conditions;
 - (e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and
 - (f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.
- (4) Construction document phase.
- (a) Revised design development construction drawings following review by all applicable agencies signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Department of Corrections.
 - (b) Revised design development specifications of material and workmanship following review by all applicable agencies.
- (5) A contract administration phase containing:
- (a) Signed copies of all contracts for construction, financing and bonding;
 - (b) Signed copies of all construction permits;
 - (c) Documentation of review by all other applicable state agencies; and
 - (d) All change orders shall be submitted to the Department of Corrections for review and approval.

Section 5. Approval of Renovation, Construction Plans and Specifications. (1) The Department of Corrections shall review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in Section 4(4) of this administrative regulation has been approved.

(2) Depending on the site of the proposed constructions, renovation or addition the Department of Corrections may combine two (2) or more phases as outlined above for review and approval.

(3) All changes prior to the approval of final construction documents shall require appropriate modifications to the final construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written or graphic addenda, field orders and change orders. In addition a set of accurate as built drawings shall be submitted to Corrections within sixty (60) days of

occupancy of the facility.

Section 6. Waiver of Compliance. (1) The Department of Corrections may grant a waiver of the implementation of the physical plant standards for an existing jail if the department determines:

- (a) That strict compliance will cause unreasonable difficulties;
- (b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Department of Corrections. The written request shall include the following information:

- (a) Citation of the specific standard involved;
- (b) Identification and description of the specific difficulties involved in meeting strict compliance;
- (c) Description of the alternative proposed; and
- (d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of inmates, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the Department of Corrections, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 7. Facility Design. (1) Depending upon its size and intended use, every jail shall include within its walls the following facilities and equipment:

(a) Entrances. Every jail shall have three (3) separate and distinct entrances: a public entrance, an adult inmate entrance, and a service entrance. The Department of Corrections may permit these entrances to be combined.

1. Public entrance. The purpose of this entrance shall be to divert the general public from the security area of the jail and from contact with incoming inmates. This area shall be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

a. Provide a clear view of this from the control room by means of direct surveillance or closed circuit T.V.

b. Meet the requirements for handicapped persons.

2. Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It may contain a loading dock and shall be located in close proximity to storage rooms and the kitchen area.

3. Adult inmate entrance. The purpose of this entrance shall be to provide secure and private access to the jail for incoming inmates. This entrance shall be serviced by a drive-in sallyport or a secure walk-in vestibule and shall incorporate the following design features:

a. Be located adjacent to the booking area.

b. Be monitored from the control room.

c. Be free of steps or other obstacles.

d. Be protected from inclement weather.

e. Have a security penal type pistol locker in sallyport or vestibule.

f. All hardware and equipment shall be of approved penal type.

(b) Exits. All openings in the security perimeter shall be secured with penal devices. Fire exits, when possible, shall open into controlled, secured courts and exercise areas.

(c) Administrative areas. Administrative areas shall provide space outside the secured area of the jail for the housing of administrative

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offices and to accommodate the public. Administrative areas shall contain the following additional areas:

1. A waiting area which shall provide:
 - a. Space for the general public; and
 - b. Protection from inclement weather;
 - c. The waiting area shall have toilet facilities and drinking fountains in new jails;
2. A visiting area, public side which shall provide for:
 - a. Private communication with inmates; and
 - b. Be located in close proximity to the waiting area;
3. An office area which shall be of sufficient space to house the administrative function of the jail; and
4. An entrance to the security area which shall:
 - a. Provide secure access to the security area;
 - b. Be of penal type; and
 - c. Have access controlled from the security area.

(d) Security areas. The area shall enclose all facilities and services required for or used by the inmates. It shall contain the following function areas: Booking area. The purpose shall be to provide a private and separate area, properly equipped to carry out admission and release procedures. All equipment shall be penal type. This area shall be designed for different classes of inmates. Design features for this area shall include:

1. Close proximity to a secure area for storage of inmate personal property.
2. Close proximity to an area for photography and fingerprinting.
3. Close proximity to an area for showering, delousing, and strip searching inmates which assures privacy for the inmate.
4. Close proximity to temporary holding and detoxification cells.
5. Located in a manner to be monitored by a control room.

(e) Detoxification area. The purpose shall be to provide an area to separate intoxicated inmates from the general inmate population. Design features shall include:

1. A minimum of fifty (50) square feet per inmate.
2. A minimum of eight (8) feet ceiling height.
3. One (1) bunk of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each inmate.
4. A penal commode, lavatory and a flush floor drain controlled from outside the cell.
5. A bubble-type drinking fountain.
6. All fixtures and equipment shall be penal type.
7. All surfaces inside the area shall be smooth, flush, and free of sharp edges and protrusions.
8. All horizontal surfaces (the bunk and the floor) shall be sloped (one-fourth (1/4) of an inch to the foot) to the floor drain.
9. All protruding corners (except at ceiling) shall be coved.
10. Ceiling, walls, surfaces of the wall base and floors shall be of approved masonry, concrete or steel construction.

11. Each detox cell shall have sufficient penal type fixture(s) capable of providing twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of light.

(f) Holding areas. The purpose of holding areas shall be for temporary detention not to exceed four (4) hours in secure holding or eight (8) hours in diversion holding.

1. Design features for secure holding shall include:
 - a. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be fifty (50) square feet.
 - b. Eight (8) feet ceiling height.
 - c. One (1) penal type bench per rated capacity.
 - d. All equipment shall be penal type.
 - e. One (1) penal type lavatory and commode.
 - f. One (1) penal type light fixture capable of providing twenty (20) foot-candles of light.
 - g. Ceilings, walls, surfaces of wall bases and floors shall be of approved masonry, concrete or steel construction.
2. If a diversion holding area is provided, features and requirements include:

- a. Twenty-five (25) square feet per rated capacity; minimum size of area shall be fifty (50) square feet;
- b. Total rated capacity not to exceed twenty-four (24) persons;
- c. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more;
- d. At least one (1) water fountain shall be located in area;
- e. Phone system shall be available for use by inmates;
- f. Construction shall be fire-rated with penal hardware, windows and door;
- g. Furnishings shall not include beds but chairs and tables per rated capacity and shall be fire rated;
- h. Unobstructed view into area shall be provided;
- i. Areas shall have constant in-person surveillance;
- j. If inmates housed in area during normal meal times, they shall be fed. Meals do not have to be hot; and
- k. Policy and procedure shall set forth criteria for placement of inmates in this area.

(g) Medical exam room. The purpose of this room shall be to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:

1. Minimum dimension shall be eight (8) feet.
2. Minimum ceiling height shall be eight (8) feet.
3. One (1) lavatory or counter sink.
4. One (1) work counter.
5. Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet.

6. One (1) or more medical examination tables.
7. Electrical power outlets shall be provided in this room.
8. All ceilings, walls, and floors shall be approved masonry, concrete or steel construction.

9. If medical services are provided outside the jail, the jail shall have a secure area for storage of medication and medical equipment.

(h) Visiting area, inmate side. The purpose shall be to provide secure and private visitation for the inmates. All equipment and furnishings shall be of penal type and permanently attached.

(i) Conference room. The purpose of this room shall be to provide space for confidential conferences between inmates and lawyers, probation officers, clergy, etc. Design features shall include:

1. Doors, windows, and light fixtures shall be penal type.
2. Walls, floors, and ceilings shall be of approved masonry, concrete or steel construction.
3. Furnishings shall be noncombustible/nontoxic as approved by the Department of Corrections.

(j) Multipurpose room. The purpose of this area shall be to provide space for assembly of inmates for specific program activities. This area shall allow at least twenty-five (25) square feet per inmate in an area with a minimum of 250 square feet. Design features shall include:

1. Doors, windows, and light fixtures shall be penal type.
2. Walls, floor, and deck shall be of approved masonry, concrete or steel construction.
3. Furnishings shall be noncombustible/nontoxic as approved by the Department of Corrections.
4. Ceiling shall be of approved constructions.

(k) Outdoor recreation. The purpose of this area shall be to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per inmate in an area with a minimum of 385 square feet.

(l) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

1. Compliance with standards of the State Food Service Code, 902 KAR 45:005.
2. Commercial type stoves and refrigeration units.
3. Doors and windows will be penal type.
4. Walls, floors, and ceilings will be approved fire rated masonry,

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concrete or steel construction.

(m) Control room. The purpose of this area shall be to control all movement of inmates within the jail and traffic in and out of the security area. Also, this area shall be the hub for operations within the jail. Design features shall include:

1. Doors and windows shall be of penal type.
2. Walls, floors, and ceiling shall be approved masonry, concrete or steel construction.
3. Audio and video monitors shall be located in this area.
4. Gauges, indicators, and alarms shall be located in this area.
5. Central control panels shall be located in this area.
6. This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

(n) When jail staff are not within normal hearing distance of inmates, an audio communication system shall be installed to allow staff to communicate with inmates.

(o) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.

(p) Confinement areas. The purpose of these areas shall be to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.
2. Providing ventilation to meet air exchange as required in the state health codes.
3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit - eighty-five (85) degrees Fahrenheit).
4. Shall be of approved masonry, concrete or steel construction.
5. All furnishings and equipment shall be penal type and permanently attached.
6. Each confinement area shall have floor drains to service each living area.
7. Be equipped with an approved securable food pass.
8. Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal type.

(2) All cells and housing areas design features shall include:

(a) Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the inmate(s) housed in the area. Depending on the size of the jail at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.

(b) Depending on the size of jail one (1) or more isolation single-man cells shall be provided.

(c) All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.

(d) Each cell shall contain:

1. A penal type commode, lavatory and drinking fountain, penal type bunks secured to floor and/or wall, penal type table with two (2) seats, and penal type storage area for personal property.

2. A penal type light fixture with controls nonaccessible to inmates unless it has staff override.

(e) The jail shall provide living space for low security inmates including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they must include:

1. Fifty (50) feet per inmate.
2. One (1) commode/lavatory/drinking fountain per eight (8) inmates. One (1) urinal may be substituted for each commode in male areas but in no instance shall the commodes be reduced to less than one-half (1/2) the number required.

3. One (1) shower per sixteen (16) inmates.

4. Sufficient tables and benches to handle the number of inmates housed in the dorm.

5. One (1) penal type storage area for personal property per inmate.

6. One (1) penal type bunk secured to the floor or wall per inmate.

(f) Each dayroom area shall contain:

1. Thirty-five (35) square feet per inmate.

2. One (1) commode per eight (8) inmates. One (1) urinal may be substituted for each commode in male areas but in no instance shall the commodes be reduced to less than one-half (1/2) the number required.

3. One (1) lavatory per eight (8) inmates.

4. One (1) drinking fountain per sixteen (16) inmates.

5. One (1) shower per sixteen (16) inmates.

6. Tables and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per inmate.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

ADMINISTRATIVE REGISTER - 1353

the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

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(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Amendment)

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jails operations.

(2) The Department of Corrections shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include but not be limited to:

- (a) Inmate rules and administrative regulations;
- (b) Staffing;
- (c) Searches of inmate and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Inmate head counts;
- (g) Surveillance checks;
- (h) Emergency situations; and
- (i) Jail schedule;
- (j) Administering medication.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each inmate on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of inmates:

- (a) Suicidal;
- (b) Assaultive, unless housed in a single cell;
- (c) Escape risk, unless housed in a single cell;
- (d) Mentally or emotionally disturbed;
- (e) Inmates in segregation, unless housed in a single cell;
- (f) Inmates in detox cell;
- (g) Juveniles, if housed in the jail; and

(h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented inmate counts every twenty-four (24) hours during which each inmate's physical presence, by show of skin, or movement shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances so determined by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by inmates only under the direct supervision of jail personnel.

(7) An inmate may be assigned the responsibility of providing inmate services such as providing meals under the direct supervision of staff; however, at no time shall an inmate be assigned to a position of authority over other inmates.

(8) Inmates shall never be permitted to perform or assist in any security duties.

(9) Jails with work release or community service programs shall establish special control procedures to minimize contact between inmates with work release privileges and other inmates.

(10) Inmates shall be thoroughly searched whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) No inmate placed in physical restraints shall be left unattended.

(14) All jails shall have key-control procedures which shall include but not be limited to:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) No inmate shall be permitted to handle keys used to operate jail security locks.

(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area.

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(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of all nonkey operated locking devices such as electrical switches or levers.

(i) Locks to outside exits shall be keyed differently from interior locks. Locks to the control room shall be keyed differently from all other locks.

(15) Trusties.

(a) At no time shall a trusty have access to or control of weapons.

(b) At no time shall an unsupervised trusty be permitted in either a program, support, or housing area with inmates of the opposite sex.

(c) At no time shall an inmate trusty be permitted in either a program, support, or housing area with juvenile inmates.

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and reflect all significant occurrences within the jail. Special reports shall include:

(1) Use of force.

(2) Disciplinary actions.

(3) Medical or mental health treatment.

(4) Feeding schedule and menus.

(5) Extraordinary occurrences.

(a) Fires.

(b) Assaults.

(c) Suicide or attempted suicide.

(d) Escape or attempted escape.

(6) Inmate vandalism.

(a) Destruction of jail property.

(b) Flooding of plumbing fixtures.

(7) Staff roster for each shift.

(8) Telephone log of initial phone call(s).

(9) Visitors log.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Amendment)

501 KAR 3:100. Food services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures for proper food services in local jails.

Section 1. Procedures. (1) The jail shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) The jailer shall provide adult inmates with a nutritionally adequate diet containing at least 2,400 calories per day. Juvenile inmates shall be provided a nutritionally adequate diet containing at least 3,000 calories per day.

(3) Inmates shall receive three (3) meals per day, two (2) of which shall be hot. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets where prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

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- (7) Food shall not be used for disciplinary or reward purposes.
- (8) A nutritionist or dietician shall approve the nutritional value of the jail menu on an annual basis.
- (9) A staff member shall directly supervise all food prepared within the jail.
- (10) All food shall be served under the direct supervision of a staff member.
- (11) The jail shall have sufficient cold and dry food storage facilities.
- (12) The jailer or his designee shall inspect the food service area daily.
- (13) ~~[No food shall be prepared in inmate living areas, however,]~~ Canteen food items purchased by inmates may be stored in amounts that do not pose a threat to the health or security of the institution.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

- (1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 - 1. First year following implementation: None
 - 2. Second and subsequent years: None
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year: None
 - 2. Continuing costs or savings: None
 - 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: Policy revisions.
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.
 - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect:

N/A

- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Amendment)

501 KAR 3:140. Inmate rights.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures to ensure the protection of inmate rights.

- Section 1. Policy and Procedure. (1) Each jail shall have a written statement of inmate rights which shall include but not be limited to:
- (a) Access to courts.
 - (b) Access to attorney.
 - (c) Mail.
 - (d) Telephone.
 - (e) Grievances.
 - (f) Search and seizure.
 - (g) Disciplinary procedure.
 - (h) Racial segregation.
 - (i) Medical care.
 - (j) Mental health care (if possible).
 - (k) Religion.

The statement of inmate rights shall be posted in a conspicuous place in the booking and inmate living areas of the jail.

(2) The jailer shall not prohibit an inmate's right of access to the judicial process.

(3) The jailer shall ensure the right of inmates to have confidential access to their attorney and their authorized representative.

(4) The jailer shall have a written policy which defines the jail's visitation rules and administrative regulations, which shall include but not be limited to:

- (a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend.
- (b) At least one (1) visit per week per inmate shall be allowed except when an inmate has been assessed a disciplinary penalty for an infraction of rules governing visitation.
- (c) Visits shall not be less than fifteen (15) minutes.
- (d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.
- (e) Children, when accompanied by an adult, shall be permitted to visit inmates.
- (5) Attorneys, clergy, and medical personnel shall be permitted to visit inmates at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.
- (6) Visitors shall register before admission and may be denied

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admission for refusal to register, for refusal to consent to search or for any violation.

(7) Inmates shall not be restricted in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:

- (a) The visitor represents a clear and present danger to security.
 - (b) The visitor has a past history of disruptive conduct at the jail.
 - (c) The visitor is under the influence of alcohol or drugs.
 - (d) The visitor refuses to submit to search or show proper identification.
 - (e) The inmate refuses the visit.
- (8) The jailer shall not listen to visitors' conversations but may observe the visitation for security reasons.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the inmate's personal rights and provides for reasonable security practices consistent with the operation of the jail.

(2) Inmates shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the inmate's rights in accordance with court decisions regarding correspondence.

(3) Incoming mail may be inspected for contraband items prior to delivery, unless such mail is received from the courts, attorney of record or public officials; then it may be opened and inspected in the presence of the inmate.

Section 3. Telephone. (1) Newly admitted inmates shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of all telephone calls made by an inmate during the admission procedure unless a telephone is available in the housing area. The log shall document the date, time and party contacted.

(3) Written policy and procedure shall permit each inmate to complete at least one (1) telephone call each week. Any expense incurred for calls shall be borne by the inmate or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) Telephone calls shall not be routinely monitored. If calls are monitored, the inmate shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Inmates shall be granted the right to practice their religion within limits necessary to maintain institution order and security.

(2) Inmates shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) Inmates shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure equal access to programs and services for all inmates provided the security and order of the jail are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written inmate grievance procedure which shall be available to all inmates. These procedures shall include provisions for:

- (1) Responses, within a reasonable time limit, to all grievance complaints.
- (2) Equal access to all inmates.
- (3) Guarantees against reprisal.
- (4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of an inmate for contraband shall be done in such a manner as the jailer determines is necessary to insure the safety of inmates and staff, and security of the jail.

(2) Each search shall be conducted in a private area and in a professional manner which protects the inmate's dignity to the extent possible.

(3) All strip searches shall be performed by a staff person of the same sex as the inmate.

Section 8. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each inmate shall be afforded access to necessary medical care.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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(c) If detrimental effect would result, explain detrimental effect:
N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures are incorporated by reference on November 14, 1995 [~~September 14, 1995~~] and hereafter should be referred to as Department of Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits (Amended 11/14/95)
9.5	Execution

9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.7	Involuntary Psychotropic Medication Policy [(Added 9/14/95)]
13.9	Dental Services
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time (Amended 11/14/95)
15.6	Adjustment Procedures and Programs
15.7	Inmate Account Restriction
16.1	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property (Amended 11/14/95)
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.1	Classification of the Inmate
18.5	Custody and Security Guidelines
18.6	Classification Document
18.7	Transfers
18.9	Out-of-state Transfers
18-10-01	Parole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
18.17	Interstate Agreement on Transfers
18.18	International Transfer of Inmates
19.1	Government Services Projects
19.2	Community Services Projects
19.3	Inmate Wage Program
20.1	Educational Programs and Educational Good Time
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
21.2	Phase I: Program Selection Assessment Criteria
21.3	Program Schedule - Phase II and Phase III
21.4	Platoon Size and Composition
21.5	Physical Conditions Program Component
21.6	Group and Individual Counseling
21.7	Drug and Alcohol Abuse Counseling and Treatment
21.8	Work Programs Component

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21.9	Education and Life Management	27-25-01	Application for Final Discharge from Parole
21.10	Auxiliary Services	27-26-01	Assistance to Former Clients and Dischargees
21.11	Offenses and Penalties	27-27-01	Restoration of Civil Rights
22.1	Privilege Trips	27-28-01	Firearms/Explosives: Application for Relief from Disability
23.1	Religion	27-29-01	Parole Review Dates Modification
25.1	Gratuities	28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
25.2	Public Official Notification of Release of an Inmate	28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
25.3	Prerelease Program	28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
25.4	Inmate Furloughs	28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
25.6	Community Center Program	28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
25.7	Expedient Release	28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
25.8	Extended Furloughs	28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
25.10	Administrative Release of Inmates	28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
25.11	Victim Notification <u>(Amended 11/14/95)</u>	28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
27-01-01	Probation and Parole Procedures <u>(Amended 11/14/95)</u>	28-02-01	Expedient Release Program
27-02-01	Duties of Probation and Parole Officers <u>(Amended 11/14/95)</u>	28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
27-03-01	Workload Formula Supervisor/Staff Ratio	28-04-01	Furlough Verifications
27-05-01	Testimony, Court Demeanor and Availability of Legal Services <u>(Amended 11/14/95)</u>	28-05-01	Out-of-state Investigations.
27-06-01	Availability of Supervision Services		
27-06-02	Equal Access to Services <u>(Amended 11/14/95)</u>		
27-07-01	Cooperation with Law Enforcement Agencies <u>(Amended 11/14/95)</u>		
27-08-01	Use of Force		
27-09-01	Kentucky Community Resources Directory <u>(Amended 11/14/95)</u>		
27-10-01	Advanced Supervision		
27-11-01	Intensive Supervision		
27-12-01	Supervision: Case Classification		
27-12-02	Risk/Needs Assessment		
27-12-03	Initial Interview		
27-12-04	Conditions of Regular Supervision/Request for Modification <u>(Amended 11/14/95)</u>		
27-12-05	Releasee's Report		
27-12-06	Grievance Procedures for Offenders		
27-12-07	Employment, Education/Vocational Referral		
27-12-08	Supervision Plan		
27-12-09	Casebook		
27-12-10	Guidelines for Monitoring Supervision Fee		
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority		
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)		
27-12-13	Community Service Work		
27-12-14	Client Travel Restrictions		
27-13-01	Drug and Alcohol Testing of Offenders		
27-13-02	Alcohol Detection		
27-14-01	Interstate Compact Transfers		
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation		
27-15-01	Supervision Report; Violations, Unusual Incidents		
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence		
27-17-01	Absconder Procedures		
27-18-01	Probation and Parole Issuance of Detainer/Warrant		
27-19-01	Preliminary Revocation Hearing		
27-20-01	Division of Probation and Parole Controlled Intake Program		
27-20-02	Prisoner Intake Notification		
27-20-03	Prisoner Status Change		
27-21-01	Apprehension and Transportation of Probation and Parole Violators		
27-22-01	Fugitive Unit - Apprehensions		
27-22-02	Fugitive Unit - Transportation of Fugitives		
27-23-01	In-state Transfer		
27-24-01	Closing Supervision Report		
27-24-02	Reinstatement of Clients to Active Supervision		

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: November 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Pamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.

(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

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(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 Division of Local Facilities (Amendment)

501 KAR 7:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth definitions.

Section 1. Definitions. (1) "Restricted Custody Center" is a facility or area separate from the jail used for the housing of sentenced inmates who have been approved for educational, work or program participation release. Pretrial inmates who have been approved by the court for educational, work or program participation release may be housed in a restricted custody center.

(2) "Jailer" means the duly elected or appointed official charged with the overall responsibility of administering the center.

(3) "Staff" means deputy jailers and other personnel involved in the supervision, custody, care, or treatment of prisoners in the center.

(4) "Resident" means any person approved for placement in the center by the jailer in accordance with the definition of a restricted custody center.

(5) "Medical authority" means the person or persons licensed and certified to provide medical care to residents in the center.

(6) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(7) "Resident living area" means a group of rooms which provide housing for the resident population.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and

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3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (Amendment)

501 KAR 7:050. Physical plant.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth standards and procedures to be followed in the design and construction of centers.

Section 1. Purpose. The purpose of this administrative regulation is to provide minimum standards for the renovation and construction of detention facilities and for measuring compliance of existing centers in accordance with KRS 441.055, 441.064, and 441.075, and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Department of Corrections shall provide for any county government which wishes to remodel an existing detention facility or construct a new facility, a consultant knowledgeable in the design, utilization, and operation of detention facilities. The consultant shall meet with the appropriate officials of that county and advise them concerning:

- (1) Site selection;
- (2) Probable need as it relates to capacity and types of residents to be housed;
- (3) Sources of financing for constructing;
- (4) Laws and administrative regulations relating to treatment of residents;
- (5) Laws and administrative regulations relating to facilities for residents;
- (6) Sources of revenue for operations of the center;
- (7) Probable cost for operation of the center; and
- (8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No center shall be built without site acceptance by the Department of Corrections. The following criteria shall be considered in site selection:

- (1) Size;
- (2) Proximity to courts;
- (3) Proximity to community resources;
- (4) Availability of public transportation;
- (5) Environmental health;
- (6) Adequate parking; and
- (7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any detention facility, plans and specifications shall be submitted to the Department of Corrections for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

- (1) A programming phase containing a(n):
 - (a) Evaluation of existing facility;
 - (b) Population analysis;
 - (c) Space requirements based on population analysis and standards for the facility and site outlined in these Kentucky Minimum Standards for Restricted Custody Centers;
 - (d) Staffing analysis;
 - (e) Cost analysis to include construction and operation cost;
 - (f) Financing alternatives, if applicable;
 - (g) Design-construction time schedule; and

- (h) Summary and recommendations; and
- (i) Information concerning the programming phase shall only be submitted:

1. On major renovation or new construction; and
2. For information review purposes.

- (2) A Schematic phase containing:

(a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;

(b) Scale drawings of the site, locating the building, parking and other facilities one (1) inch = fifty (50) feet;

- (c) Documentation of site as to:

1. Size;
2. Proximity to courts;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.

(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;

- (e) Scale elevation drawings of all exterior walls;

(f) Schematic cost estimate to include revised construction and operation costs; and

- (g) A revised design-construction time schedule.

- (3) A design development phase containing:

(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

- (c) Specifications for all materials and workmanship;

- (d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

- (4) A construction document phase containing:

(a) Revised design development construction drawings following review by all applicable agencies signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Department of Corrections; and

(b) Revised design development specifications of material and workmanship following review by all applicable agencies.

- (5) A contract administration phase containing:

(a) Signed copies of all contracts for construction, financing and bonding;

- (b) Signed copies of all construction permits;

(c) Documentation of review by all other applicable state agencies; and

(d) All change orders shall be submitted to the Department of Corrections for review and approval.

Section 5. Approval of Renovation, Construction Plans and Specifications. (1) The Department of Corrections shall review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in Section 4(4) of this administrative regulation has been approved.

(2) Depending on the site of the proposed construction, renovation or addition the Department of Corrections may combine two (2) or more phases as outlined in this section for review and approval.

(3) All changes to the plans shall require redraws unless specifically exempted by the Department of Corrections. Specifications must be rewritten to reflect changes.

Section 6. Waiver of Compliance. (1) The Department of Correc-

tions may grant a waiver of the implementation of the physical plant standards for an existing center if the department determines:

- (a) That strict compliance will cause unreasonable difficulties;
- (b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operations of the center; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Department of Corrections. The written request shall include the following information:

- (a) Citation of the specific standard involved;
- (b) Identification and description of the specific difficulties involved in meeting strict compliance;
- (c) Description of alternative proposed; and
- (d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of residents, programs, or the safe, healthful, or efficient operation of the center.

(3) A waiver, if granted by the Department of Corrections, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 7. Facility Design. (1) Each center shall have two (2) separate entrances, a resident entrance and a service entrance. The Department of Corrections may permit these entrances to be combined.

(a) Residents' entry. The purpose of this entrance shall be to provide secure and controlled access to the center for residents.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It should be located in close proximity to storage rooms and the kitchen area.

(2) All exits in the security area shall be secured.

(3) Security area. The area shall enclose all facilities and services required for or used by residents. It shall contain the following function areas:

(a) Control area. This area shall be located in close proximity to the resident entrance and shall be used to monitor the movement of residents in and out of the facility.

(b) Visitation. Adequate space shall be made available for contact visits between residents and families. Tables and chairs shall be provided. Bathroom facilities shall be available to serve this area.

(c) Multipurpose room. The purpose of this area is to provide space for assembly of residents for specific program activities. Adequate furnishings shall be provided.

(d) Conference area. The purpose of this space is to provide space for confidential conferences between residents and lawyers, counselors, clergy, etc. A table and chairs shall be provided.

(e) Living areas.

1. All sleeping rooms shall provide a minimum of fifty (50) square feet per resident. No more than ~~thirty-six (36)~~ twenty-four (24) residents shall be placed in a single sleeping room.

2. Each resident has provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linen, chair, and closet/locker space for the storage of personal items.

3. Sleeping areas shall have lighting of at least twenty (20) foot-candles in reading and grooming area with a nightlight capable of providing five (5) foot-candles of light.

4. The facility shall have one (1) toilet for every eight (8) residents, one (1) wash basin for every eight (8) residents and a shower

for every eight (8) residents. One (1) urinal may be substituted for each commode in male areas but in no instance shall the commodes be reduced to less than one-half (1/2) the number required.

5. Phone facilities are available for resident use.

6. Provide temperature ranges within comfort zones (sixty-five (65) degree Fahrenheit to eighty-five (85) degree Fahrenheit).

7. Provide ventilation to meet air exchange as required in the State Health Code.

(f) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the State Food Service Code. If food is not prepared in the facility, a food distribution area shall be substituted.

(g) Laundry facilities. Laundry facilities to include at least one (1) washer and dryer per sixteen (16) residents shall be located at the center or a contract for such services shall be in effect.

(h) Furnishings. All furnishings in the center shall be noncombustible/nontoxic as approved by Corrections.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

**TRANSPORTATION CABINET
Office of Minority Affairs
(Amendment)**

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

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23, 15 USC 637

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded

to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations (15 USC 637(a)), which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment.

(13) "Prequalified" means that the Transportation Cabinet has approved the firm or business enterprise to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A, 600 KAR 1:101, or 603 KAR 2:015.

(14) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans,

Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, United States Code Title 15 Section 637. The Transportation Cabinet shall have a rebuttable presumption that individuals listed in paragraphs (a) through (f) of this subsection are socially and economically disadvantaged.

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(15) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. Adoption of Governing Federal Material. (1) 49 CFR 23, effective June 1, 1992, is adopted without change. This federal regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

(2) "The Disadvantaged Business Enterprise Program Administration Participants Manual", Chapters I - VI, US Department of Transportation's Publication No. FHWA FHWA-CR-90-003 dated April, 1990 is incorporated by reference as a part of this administrative regulation. This manual shall be used by the Transportation Cabinet for guidance and direction in administering the DBE program.

~~[(3) The manual incorporated by reference in this section can be viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502)564-3601. The office hours are 8 a.m. through 4:30 p.m., local prevailing time, on weekdays.]~~

Section 3. Application Process. (1)(a) Application for certification or recertification as set forth in Section 6 of this administrative regulation as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's Office of Minority Affairs on form TC 10-3.

(b) Each application form shall be completed in full.

(c) All documentation required by the application shall be attached to the completed application.

(d) The person signing the application shall be one (1) of the persons on whom the DBE, MBE, or WBE status is based and shall identify his position with the firm or business enterprise applying for certification.

(e) The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Transportation Cabinet, Office of Minority Affairs.

(3)(a) The Transportation Cabinet shall perform an on-site inspection of each new applicant which is located within the boundary of Kentucky or, if in another jurisdiction, within seventy-five (75) miles (120.7 kilometers) of the boundary of Kentucky.

(b) The Transportation Cabinet may perform an on-site inspection

of any firm previously certified which is applying for recertification pursuant to Section 6 of this administrative regulation.

(c) Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Transportation Cabinet to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Transportation Cabinet shall be certified as a DBE, MBE, or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Transportation Cabinet may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet to deny the application.

(6) During the period prior to the formal submittal of the application, the Transportation Cabinet or its supportive services contractor shall:

(a) When requested by the applicant, provide technical advice needed by the applicant in completing the application form and the supporting documentation;

(b) When requested by the applicant, advise the applicant firm of any apparent existing structural, organizational, or financial impediments to the firm's certification; or

(c) Allow the applicant to make any structural, organizational, or financial changes to its organization necessary to bring the applicant into compliance with the requirements of this administrative regulation.

(7) The form TC 10-3, Application for Certification Schedule A, last revised in January, 1992 is hereby incorporated by reference as a part of this administrative regulation. ~~[Copies may be obtained, viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The telephone number is (502)564-3601.]~~

Section 4. Evaluation of Application. (1)(a) The Transportation Cabinet shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE.

(b) The Transportation Cabinet shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE.

(c) To be certified a firm shall:

1. Be operated with the intention of making a profit; and

2. Submit evidence of the firm's operational status prior to the date of the application which includes, but is not limited to the following:

a. A copy of a bid or quotation on a publicly or privately funded project;

b. A copy of an invoice, purchase order, or bill of lading;

c. Proof of gross receipts or receivables due; or

d. A copy of the current certificate of existence or authorization issued by the Kentucky Secretary of State pursuant to KRS 271B.1-280.

(2) There is a DBE Certification Committee established in the Transportation Cabinet to review and evaluate the applications submitted pursuant to:

(a) Section 3 of this administrative regulation; and

(b) Section 6 of this administrative regulation, except notices of "No Change".

(3) The DBE Certification Committee shall be composed of the following members:

(a) Executive Director, Office of Minority Affairs, Chair;

(b) State Highway Engineer or his designee;

(c) Director, Division of Construction or his designee;

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(d) Director, Division of Highway Design or his designee;
(e) Audit Manager, Internal Audit Branch or his designee;
(f) Executive Director, Office of General Counsel or his designee;
and

(g) Kentucky Administrator of the Federal Highway Administration or his designee, ex officio, nonvoting member.

(4) The Chairman of the Certification Committee shall schedule meetings as needed.

(5) Four (4) of the voting members of the Certification Committee shall constitute a quorum.

(6)(a) A simple majority of the voting members present at a meeting with a quorum shall be required to approve an application.

(b) A summary record of each meeting shall be maintained by the Office of Minority Affairs and presented for review and approval at the next meeting of the committee which has a quorum present.

(7) At least two (2) weeks prior to the meeting of the committee when an application is to be considered, the Office of Minority Affairs shall provide a complete copy of the application and staff summary and recommendation to each member of the committee.

(8) The DBE Liaison Officer shall be present at the committee meeting to answer questions and provide technical information.

(9) The Transportation Cabinet shall issue a written determination of eligibility for certification within ninety (90) days of receipt of a completed original application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

(10) ~~(3)~~ The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the groups listed in Section 1(11) of this administrative regulation are socially and economically disadvantaged.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE, or WBE is approved by the Transportation Cabinet and a challenge to the status of a firm from a third party as set forth in Section 9 of this administrative regulation is not received during the time the Transportation Cabinet is evaluating the application, the written notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE, or WBE.

(2) Certification as a DBE, MBE, or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a firm or business enterprise shall expire immediately upon any change in ownership or control of the firm or business enterprise. The firm or business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration, a certified DBE, MBE, or WBE, that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs.

(a) Every other year the application shall be in the same form and require the same information as in Section 3 of this administrative regulation.

(b) In the alternate year, if there have been no changes since the last application was filed and the application form and attachments would be identical to the last one filed, the applicant may submit a ~~written, sworn~~ statement of "no change" to the Transportation Cabinet on form TC 10-16 adopted in June 1995. That form is incorporated by reference as a part of this administrative regulation.

(c) Beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway

construction, design, or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 14 of this administrative regulation.

(2) Certification of a DBE, MBE, or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Transportation Cabinet denies the request for recertification as set forth in this section. Until notified otherwise by the Transportation Cabinet, a certification for which a recertification application has been timely filed shall continue in force as though the recertification had been approved.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied effective thirty (30) days from the date of notification.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Transportation Cabinet's decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective on the latter of the following dates:

(a) Immediately upon the issuance of written notice by the Transportation Cabinet to the firm; or

(b) Thirty (30) days from the date of notification set forth in subsection (3) of this section.

(6) The firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm shall not reapply for certification for one (1) year from the effective date of denial.

(4) The effective date of denial shall be one (1) of the following dates:

(a) If the denial is not appealed, the date the notice is received or delivery is attempted;

(b) If the denial is appealed and the denial is upheld, the date of the notice of final action on behalf of the Transportation Cabinet; or

(c) If the denial is appealed and the appellant withdraws, cancels, or otherwise suspends the appeal, the date of the withdrawal, cancellation, or suspension of the appeal.

Section 8. Decertification. (1) The Transportation Cabinet may perform periodic reviews or on-site inspections of a certified DBE, MBE, or WBE during its certification period to verify continued eligibility of the firm. If the Transportation Cabinet finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Transportation Cabinet as a part of the periodic review, the cabinet may initiate a decertification proceeding.

(2) The Transportation Cabinet shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the date the notice is received or delivery is attempted. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(4) If the Transportation Cabinet's decision after the prede-

termination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification shall be thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current certification from the Small Business Administration issued pursuant to United States Code Title 15 Section 637, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging third party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Transportation Cabinet shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Transportation Cabinet determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This shall terminate the proceeding.

(5) If the Transportation Cabinet determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Transportation Cabinet shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Transportation Cabinet shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Transportation Cabinet shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the

presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Transportation Cabinet in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Transportation Cabinet may be requested by any party as set forth in Sections 6, 8, and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the date for the predetermination meeting to be between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Transportation Cabinet shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Transportation Cabinet. The affected parties may be represented by legal counsel.

(5) The Transportation Cabinet shall render a written decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Transportation Cabinet shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Transportation Cabinet.

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2)(a) The Transportation Cabinet shall schedule the date for the hearing on the appeal to be between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(b) If an appeal hearing is rescheduled beyond the thirty (30) days from the date of the notification to deny certification at the request of the applicant firm and the firm is not currently certified, the firm's annual certification has expired, or the firm's request for recertification has been denied, the Office of Minority Affairs shall not approve as part of an established DBE goal any of the work contracted by the applicant.

(3) The Transportation Cabinet shall conduct the administrative hearing pursuant to the provisions of KRS Chapter 13B. ~~[provide written notice to the appellant of the date, time, and location of the hearing.]~~

~~(4) At the hearing, the hearing officer appointed by the Transportation Cabinet shall provide an opportunity for the appellant to call witnesses and present evidence and arguments, both written and oral as to why the decision of the Transportation Cabinet should be overturned.~~

~~(5) The Transportation Cabinet shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.~~

~~(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.~~

~~(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.~~

~~(8)(a) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of~~

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~~final action within sixty (60) days of the hearing unless otherwise agreed to by all parties.]~~

~~(4) [(b)] The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or owner interview was conducted by the Transportation Cabinet. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Transportation Cabinet or a hearing examiner in determining the eligibility of the firm.~~

~~[(c) The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.~~

~~(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.]~~

~~(5) [(4)] An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.~~

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE, or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE, or WBE program. Application for certification shall be on Transportation Cabinet Form TC 10-5 ~~[which is incorporated by reference as a part of this administrative regulation]~~. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(3) If all firms involved in the joint venture are certified DBEs, MBEs, or WBEs, there shall not be a need for the joint venture to request certification as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(4) The form TC 10-5, DBE/WBE Joint Venture Eligibility Application, Schedule B, last revised in February, 1992 is hereby incorporated by reference as a part of this administrative regulation. ~~[Copies may be obtained, viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The telephone number is (502) 564-3601.]~~

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3 ~~as effective on June 7, 1995 [April 22, 1994]~~, is adopted without change. The federal regulation sets standards for the size of small businesses as established by the Small Business Administration. These size standards, when less than \$16.6 ~~[15.37]~~ million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 14. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of KRS 45A.825, 600 KAR 1:101, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1), one (1) week management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky, but which are within a seventy-five (75) mile (120.7 kilometer) proximity, may be required by the Office of Minority Affairs to attend at least one (1) management development course. This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and

evaluation of the firm's prequalification status.

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 15. Disadvantaged Business Enterprise Orientation Program. (1) The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under KRS 45A.825, 600 KAR 1:101, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 16. Material Incorporated by Reference. Copies of all of the material incorporated by reference may be obtained, viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The telephone number is (502) 564-3601.

MAURICE SWEENEY, Executive Director
J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: November 13, 1995

FILED WITH LRC: November 17, 1995 at 1 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on James 29, 1996 at 1:30 p.m. local prevailing time in the Transportation Cabinet, 501 High Street, Room 1003 State Office Building, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996, 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 January 24, 1996. 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 January 29,

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1996. 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 firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change as a result of the changes to the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No changes as a result of the changes to the administrative regulation.

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

1. First year following implementation: No effect as a result of the changes to this administrative regulation.

2. Second and subsequent years: The applicants for recertification will not have to file the entire form and back-up documentation more than every other year. While this will not impact competition, it will reduce the paperwork for those firms.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The addition of a committee to review and approve the applications will cost more manpower and paperwork for the Transportation Cabinet. However, the resultant scrutiny of the applicants will make the extra effort worthwhile.

1. First year: Same as above.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The meeting minutes for the Committee will have to be maintained. Copies of all applications will have to be provided to the committee members.

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because the program has been criticized for not providing an outside, objective review of the applications for certification as a DBE. Creation of the Committee with its broad range of expertise should relieve any concerns about partiality in review of the applications.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes Tiering was applied in that the firms to be prequalified are required to meet different standards if they are prequalifying for different classifications.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the USC and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. US Department of Transportation has found the procedures to be consistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. The change in the management program has received federal approval and brought Kentucky Transportation Cabinet back into compliance with the mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET Department of Highways Permits Branch (Amendment)

603 KAR 3:080. Advertising devices.

RELATES TO: KRS 177.830 to 177.890, 23 USC 131 [448], 23 CFR Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 USC 131 [448], 23 CFR Part 750

NECESSITY AND FUNCTION: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation.

Section 1. Definitions. (1) "Advertising device" or "device" means as defined in KRS 177.830(5).

(2) "Abandoned" or "discontinued" means that for a period of one

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(1) year or more that the device:

- (a) Has not displayed any advertising matter;
- (b) Has displayed obsolete advertising matter; or
- (c) Has needed substantial repairs.

A notice that the device is for sale, rent, or lease shall not be considered advertising matter.

(3) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the primary activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercially or industrially developed area" means, as it is applied to interstate and parkway highways only:

(a) Any area within 100 feet of, and including any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one (1) of the enterprises is being conducted is located at a distance greater than 1620 feet from any other structure from which one (1) of the other enterprises is being conducted; and

(b) 1. The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial; or

2. ~~(b)~~ The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959 and is currently zoned for commercial or industrial use at the time of the application for an advertising device permit; and

(c) Not less than ten (10) of the enterprises referred to in paragraph (a) of this subsection are at the time of the permit application and were on March 10, 1960, located consistent with state and local zoning laws and administrative regulations.

(9) "Commercial or industrial zone" means as defined in KRS 177.830(7).

(10) "Comprehensively zoned" means, as it is applied to FAP highways only, that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(11) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(12) "Destroyed" means that the advertising device has sustained damage by any means in excess of fifty (50) ~~sixty (60)~~ percent of the entire advertising device which includes supports, poles, guys, struts, panels, facing, and bracing ~~(depreciated replacement cost)~~. The damage is such that to be structurally and visually acceptable, one (1) or more of the following remedies is essential:

- (a) Adding guys or struts;
- (b) Adding new supports or poles by splicing or attaching to existing supports;
- (c) Adding separate new auxiliary supports or poles;
- (d) Adding new or replacement peripheral or integral structural bracing or framing; or
- (e) Adding new or replacement panels or facings.

(13) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

(14) "Federal-aid primary highway" or "FAP highway" means as

defined in KRS 177.830(3) and 23 USC 131. The FAP highways are listed in Section 11 of this administrative regulation.

(15) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(16) "Interstate highway" means as defined in KRS 177.830(2).

(17) "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(18) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, access ramps, or parking areas.

(19) "Nonbillboard off-premise advertising device" means, as it is applicable to FAP highways only, an advertising device not located on the property which it is advertising and limited to advertising for a city, church, or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(20) "Nonconforming advertising device" means an off-premise advertising device which was lawfully erected but does not comply with the provisions of state law or administrative regulation passed at a later date or which later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

- (a) Zoning changes;
- (b) Highway relocation;
- (c) Highway reclassification; or
- (d) Changes in restrictions on size, spacing or distance.

(21) "Official sign" means a sign located within the highway right-of-way installed by or on behalf of the Department of Highways or other public agency having jurisdiction. Included in these signs are:

- (a) Signs denoting the location of underground utilities;
- (b) Signs required by federal, state or local governments to delineate boundaries of reservations, parks or districts;
- (c) Street signs or traffic control signs; or
- (d) Signs required by state law.

(22) "On-premise advertising device" means an advertising device that contains a message relating to the primary ~~an~~ activity or the sale of a primary product within the boundaries of the property on which the device is located.

(23) "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to advertising devices, parkways shall be considered the equivalent of interstate highways.

(24) "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(25) "Primary business or activity" means that the sale of one product or a business activity which takes precedence over any or all other product sales or business activities.

(26) "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet (200.64 meters) of the state-owned highway right-of-way of the interstate, parkway and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet (200.64 meters) from the right-of-way of all interstate, parkway and FAP highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

(27) "Public service information" means information allowed on an on-premise advertising device which may be illuminated by any flashing, moving or intermittent light or lights and which shall be limited to time, temperature, date, and current weather conditions.

(28) "Public service sign" means, as it is applicable to FAP highways only, a sign erected or located on a school bus shelter.

(29) [(28)] "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation. This definition shall apply to signs on school bus shelters on FAP highways only.

(30) [(29)] "Routine change of message" means, as it relates to a nonconforming advertising device, the message change on an advertising device [ie] from one (1) advertised product or activity to another. This includes the lamination or preparation of the existing panels or facings at [inside] a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(31) [(30)] "Routine maintenance" means, as it relates to a nonconforming advertising device:

- (a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;
- (b) The routine change of message; and
- (c) The lamination or preparation [fixing] of existing panels or facings at a location other than that of the advertising device.
- (d) Routine maintenance shall not mean:

1. Adding guys or struts for the stabilization of the device or substantially changing the device; or
2. Replacement or repair of panels, poles, or facings or the addition of new panels, poles, or facings;

(32) [(31)] "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.

(33) [(32)] "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.

(34) [(33)] "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(35) [(34)] "Urban area" means as defined in KRS 177.830(10).

(36) [(35)] "Visible" means capable of being seen, whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected for [with] the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except directional or other official signs or signals erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

- (a) Directional and other official devices including signs or devices placed by the Department of Highways;
- (b) Signs or devices, limited in size to two (2) square feet (0.184 square meters), denoting the location of underground utilities; or
- (c) Signs, limited in size to 150 square feet (thirteen and eight-tenths (13.8) square meters), erected by federal, state or local governments to delineate boundaries of reservations, parks or districts.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to advertising devices on interstate, parkway and FAP highways.

(1) Bonus agreement.

(a) Advertising devices which are visible from interstate highways, parkways, or FAP highways shall be governed by the provisions of the agreement between the Kentucky Department of Highways and the Federal Highway Administration which was executed on December 23, 1971.

(b) This agreement is authorized by KRS 177.890 and 23 CFR Part 1.35 and required by 23 CFR Parts 190 and 750.

(c) The agreement is incorporated by reference as a part of this administrative regulation.

(2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate,

parkway or FAP highway shall be allowed in protected areas.

(3) [(2)] Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS Chapter 177 shall apply to each of these highways.

(4) [(3)] Nonconforming advertising device may exist. An off-premise nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, only so long as it is:

- (a) Not destroyed, abandoned or discontinued;
- (b) Subjected to only routine maintenance;
- (c) In conformance with local zoning or sign or building restrictions at the time of the erection; and
- (d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(e) Performance of other than routine maintenance on a nonconforming, but otherwise legal, advertising device shall cause it to lose its legal status and to be classified as illegal.

(5) [(4)] Vandalized nonconforming device.

(a) The owner of a nonconforming, but otherwise legal, advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall contain the following:

1. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible, including the same number of poles, type of stanchion, supports, material of poles or stanchion, and material of facing;
2. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;
3. Ownership of the advertising device;
4. Dimensions of the destroyed advertising device;
5. Material used in erection of the destroyed advertising device;
6. Durability of the new device;
7. Stanchion type; and
8. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(6) [(5)] Required measuring methods.

(a) To establish protected areas, distances from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet (200.64 meters) inside urban area boundaries and to the horizon outside urban area boundary lines.

(b) ~~[To measure distances for the determination of spacing for advertising devices, a line shall be drawn perpendicular from each advertising device to the centerline of the highway to embrace the greatest longitude along the centerline of the highway.]~~

(c) 1. V-shaped or back-to-back type billboard advertising devices shall not be more than fifteen (15) feet apart at the nearest point between the two (2) sign facings [billboards] and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings [billboards] shall not be greater than forty-five (45) degrees.

(c) [(d)] The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(7) [(6)] Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

- (a) An off-premise advertising device shall not exceed the

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maximum size stated in KRS 177.863(3)(a);

(b) V-shaped, double-faced, or back-to-back billboard advertising devices shall be considered as specified in KRS 177.863(2)(b);

(c) 1. A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

2. If a billboard advertising device contains two (2) messages, each one (1) shall occupy approximately fifty (50) percent of the device;

~~(d) 1. The issuance of billboard permits as they relate to the required spacing between the billboards shall be determined on a "first come, first served" basis.~~

~~2. Proof of lease or ownership of a site shall accompany the application for a permit submitted to the Department of Highways pursuant to Section 6 of this administrative regulation.~~

~~3. An approved advertising device application shall only be valid for one (1) year. If the device has not been constructed in that year, the applicant shall apply for renewal of his approved application prior to erecting the advertising device.~~

~~(e) 1. An on-premise advertising device shall not affect spacing requirements for billboard advertising.~~

~~(e) 1. A billboard advertising device may only be illuminated by white lights.~~

~~(8) 1. Criteria for on-premise advertising devices. The following criteria are applicable to all on-premise advertising devices located in a protected area:~~

~~(a) An on-premise advertising device shall not exceed [have] the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary lines.~~

~~(b) Only one (1) on-premise device may be located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line.~~

~~(c) An on-premise advertising device shall not exceed twenty (20) feet (12.08 meters) in length, width or height or 150 square feet (thirteen and eight-tenths (13.8) square meters) in area including border and trim but excluding supports if it is farther than fifty (50) feet from the activity boundary line.~~

~~(d) 1. An on-premise advertising device shall not be located more than 400 feet (121.6 meters), measured within the property boundary, from the advertised activity boundary line.~~

~~2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet (thirty and four-tenths (30.4) meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.~~

~~3. Any other activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.~~

~~4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.~~

~~5. When taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.~~

~~(e) There shall not be requirements for spacing between on-premise advertising devices.~~

~~(f) Only the following types of on-premise advertising devices shall be located so that they are visible from the main traveled way of an interstate, parkway or FAP highway:~~

~~1. Those indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;~~

~~2. Those showing the name or type of business or profession conducted on the property on which the advertising device is located;~~

~~3. Information required or authorized by law to be posted or displayed on the property;~~

~~4. Those advertising the sale or leasing of the property upon which the advertising device is located;~~

~~5. Those setting forth the advertisement of an activity or sale of products on the property where the advertising device is located; or~~

~~6. Signs with a maximum area of eight (8) square feet (0.736 square meters) noting credit card acceptance or trading stamps.~~

~~(g) An on-premise advertising device shall advertise only the primary activity or primary business conducted upon the property on which it is located.~~

~~(h) Brand names shall not be advertised on [in] an on-premise advertising device when the sale of an item with the brand name is incidental to the primary activity or business.~~

~~(i) A marquee type on-premise advertising device, such as a device at a typical theater or cinema, may change messages from advertising one (1) legitimate on-premise activity to another. The message change shall not occur more than one (1) time per day.~~

~~(j) Industrial park type on-premise advertising devices which shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain only the following messages:~~

~~1. The name of the industrial park;~~

~~2. The city or county associated with the industrial park; or~~

~~3. The name of the individual business or industries located in the industrial park.~~

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. Advertising devices closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) Billboard advertising devices may be erected or maintained in a protected area of an interstate or parkway highway if the area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation and if the advertising device complies with the provisions of KRS Chapter 177 and this administrative regulation as well as applicable county or city zoning ordinances or administrative regulations.

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in such manner that only one (1) off-premise advertising device located within the 500 feet (152 meters) is visible from the interstate or parkway highway at any one time.

(3) Prohibited advertising devices. The erection or existence of the following advertising devices shall not be permitted or allowed in protected areas:

(a) An advertising device which is advertising an activity that is illegal under state or federal law, or administrative regulation;

(b) An obsolete advertising device;

(c) An advertising device that is not clean, safe, and in good repair;

(d) An advertising device that is not securely affixed to a substantial structure which is permanently attached to the ground;

~~(e) [An advertising device illuminated by other than white lights;~~

~~(f) 1. An advertising device which attempts or appears to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or traffic control device;~~

~~(f) 1. An advertising device which prevents the driver of a vehicle from having a clear and unobstructed view of official signs or approaching or merging traffic;~~

(g) ~~[(h)]~~ An advertising device which contains, includes or is illuminated by any flashing, intermittent or moving lights, except for an on-premise device~~[e]~~ providing public service information ~~[including time, date, temperature or weather]~~;

(h) ~~[(i)]~~ An advertising device which uses lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of a low intensity or a low brilliance so as not to cause glare or not to impair the vision of the driver of any motor vehicle or to otherwise interfere with any driver's operation of a motor vehicle;

(i) ~~[(j)]~~ An advertising device which moves or has any animated or moving parts;

(j) ~~[(k)]~~ An advertising device erected or maintained upon trees or planted or drawn upon rocks or other natural features;

(k) ~~[(l)]~~ An advertising device exceeding 1,250 square feet (115 square meters) in area, including border and trim but excluding supports;

(l) ~~[(m)]~~ An advertising device erected upon or overhanging the right-of-way of any highway; or

(m) ~~[(n)]~~ An advertising device which interferes with any official sign, signal or traffic control device.

(4) The provisions of KRS 177.860(4) shall not be applicable to an advertising device erected or proposed to be erected in the protected area of an interstate or parkway highway unless in an area which is a commercially or industrially developed area as defined in Section 1 of this administrative regulation.

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary Highways. (1) Billboard advertising devices on FAP highways. Billboard advertising devices may be permitted in protected areas of FAP highways if they are located in unzoned commercial or industrial areas or commercial or industrial zones and if the devices comply with applicable state, county or city zoning ordinances or administrative regulations.

(a)1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an FAP highway as long as there is a commercial, business, or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of a FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet from the right-of-way of the FAP highway.

(d)1. Minimum spacing between billboard advertising devices in unzoned commercial or industrial areas shall be 300 feet (ninety-one and two-tenths (91.2) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet (thirty and four-tenths (30.4) meters) within incorporated municipalities which do not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (thirty and four-tenths (30.4) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(f) Advertising devices which meet the criteria set forth in KRS 177.863(1) shall be prohibited.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near FAP highways, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet (212.8 meters) in each direction.

(3) Nonbillboard off-premise advertising devices on FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of any FAP highway.

(c) Only one (1) nonbillboard off-premise advertising device relating to a particular city, church, or civic organization may be erected in each direction of travel on any one (1) FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet (thirty and four-tenths (30.4) meters).

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) Church or civic club type nonbillboard advertising devices which shall be limited in area to eight (8) square feet (0.736 square meters) may contain only the following messages:

1. Name and address of the church or civic club;
2. Location and time of meetings, and a directional arrow; or
3. Special events such as Vacation Bible School, revival, etc.

These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet (0.736 square meters) in area.

(4) Public service sign criteria. Public service signs may be allowed if they conform to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet (2.944 square meters) in area including border and trim.

(b)1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation is required for on-premise advertising devices on FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a)1. Application for an advertising device permit shall be made

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on form TC 99-31 as revised in December 1995 ~~[September, 1993]~~. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device. The application form is hereby incorporated by reference as a part of this administrative regulation.

2. The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a "first-come, first-served" basis.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;
2. Applicant's plot plan;
3. Location, milepoint and sign plans for the advertising device;
4. A copy of all applicable local permits;
5. A copy of the lease or ownership of the proposed billboard site, if applicable; and

6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph or drawing.

(c) The applicant shall submit three (3) copies of all required documentation.

(d) Copies of this application form may be viewed, copied or obtained from the Department of Highways, Permits Branch, Eleventh [Division of Traffic, First] Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the Permits Branch is (502) 564-4501 [Division of Traffic is (502) 564-3020]. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday except state holidays.

(3) An approved advertising device application shall be valid for only one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the application.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a)1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative

regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner ~~[of the advertising]~~ within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or permittee of the action which it intends to take ~~[legal action]~~ to have the noncompliant advertising device removed or otherwise brought into compliance.

(3) Appeal of notice.

(a) If the permittee or owner disagrees with any notice received from the Department of Highways, within twenty (20) days, he may contact the person who sent the notice to unofficially protest the notice and to attempt to correct any problems with his advertising device or to provide additional information to the Department of Highways.

(b) If the owner or permittee is not satisfied with the result of his action taken pursuant to paragraph (a) of this subsection, he may appeal the Transportation Cabinet, Office of General Counsel within twenty (20) days of the date of the Department of Highway's written response.

(c) The owner or permittee may appeal directly to the Transportation Cabinet, Office of General Counsel without following the procedure set forth in paragraph (a) of this subsection.

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Buying rights, title, etc. When the Transportation Cabinet determines that it is necessary to remove either a legal or nonconforming advertising device, just compensation shall be paid for the following:

(a) The taking from the owner of the advertising device all right, title, leasehold and interest in the advertising device; or

(b) The taking from the owner of the real property on which the advertising device is located or the right to erect and maintain the advertising device thereon.

(2) Just compensation procedures.

(a) Payment of just compensation shall be determined by an appraisal or value finding.

(b) A nonconforming advertising device shall not qualify for just compensation if:

1. It is destroyed, abandoned, or discontinued;
2. It receives more than routine maintenance; or

3. It does not comply with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

Section 9. Appeal Procedure. (1)(a) Any party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation within twenty (20) days of the date of the notice or action may file a written appeal with the Office of General Counsel in the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622.

(b) The appeal shall set forth the nature of the complaint and the grounds for the appeal.

(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.

(3) If the appellant wishes to continue the appeal after the administrative hearing set forth in KRS Chapter 13B, the court of proper jurisdiction for the filing of an appeal shall be Franklin Circuit Court.

Section 10. Scenic Byways. (1) On any FAP, interstate, or parkway highway designated by the Transportation Cabinet ~~[or the Federal Highway Administration]~~ as a scenic byway pursuant to 603 KAR 3:090 ~~[including the Great River Road]~~, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic, ~~regardless of the highway classification.~~

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(2) The outdoor advertising devices legally in existence at the time of designation of the highway as scenic may continue to have routine maintenance. ~~The Great River Road segments are the following:~~

- (a) KY 94 from the Tennessee state line in Fulton County to KY 239 in Hickman County;
- (b) KY 239 from KY 94 in Hickman County to KY 123 in Carlisle County;
- (c) KY 123 from KY 239 to KY 1022 in Carlisle County;

- (d) KY 1022 from KY 123 to US 51 in Carlisle County; and
- (e) US 51 in Carlisle County to the Illinois state line.]

(3) The sponsor of a scenic byway application pursuant to 603 KAR 3:090 for a highway which is not a FAP, interstate, or parkway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.

(4) The following FAP highways in Kentucky have been designated as scenic byways pursuant to 603 KAR 3:090:

	From	To Milepoints
(a) Cordell Hull Highway in Barren County:		
KY 70 - From I-65 overpass to KY 90.	5.118	5.359
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
US 31E - From KY 90 to US 68.	14.849	14.258
US 31EX - From US 68 to Washington Street around Courthouse Square in Glasgow.	1.516	1.384
(b) Old Kentucky Turnpike in Larue County:		
US 31E - From the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line.	7.000	20.725
(c) Old Kentucky Turnpike in Nelson County:		
US 31E - From the Larue County Line to US 62 in Bardstown.	.000	14.205
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to entrance of My Old Kentucky Home State Park.	0.000	0.375
(d) Shakertown Road in Mercer County:		
US 68 - From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village.	15.652	13.252
(e) Duncan Hines Scenic Highway in Warren County:		
KY 101 - From US 31W (south) to Edmonson County Line.	11.641	12.850
US 31E - From Duncan Hines former home to KY 446 overpass.	16.559	17.569
(f) Duncan Hines Scenic Highway in Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhoda.	0.000	4.131
KY 259 - From KY 101 at Rhoda to KY 70 (east).	9.242	12.096
KY 70 - From KY 259 (south) to KY 259 (north).	12.388	9.939
KY 259 - From KY 238 at Bee Spring to KY 738.	18.998	17.568
(g) Great River Road in Fulton County:		
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
(h) Great River Road in Hickman County:		
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
(i) Pine Mountain Road in Letcher County:		
US 119 - From KY 15 in Whitesburg to KY 806 near Oven Fork.	17.308	9.155
(j) US 68 Segment 1 in Boyle County:		
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
(k) US 68 Segment 1 in Jessamine County:		
US 68 - From Mercer County Line to 0.5 miles south of KY 1980.	0.000	11.610
(l) US 68 Segment 1 in Mercer County:		
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
(m) US 68 Segment 2 in Bourbon County:		
US 27/68 - From Fayette County Line to US 68X in Paris.	0.000	6.765
US 68X - From 10th Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass to North Middletown Road in Paris.	2.583	2.772
US 68 - From US 68X to the Nicholas County Line.	2.360	10.814
(n) US 68 Segment 2 in Nicholas County:		
US 68 - From Bourbon County Line to KY 32/36.	0.000	3.717
(o) US 68 Segment 3 in Nicholas County:		
US 68 - From the Licking River Bridge to the Robertson County Line.	11.687	12.211
(p) US 68 Segment 3 in Robertson County:		
US 68 - From Nicholas County Line to the Fleming County Line.	0.000	1.357
(q) US 68 Segment 3 in Fleming County:		
US 68 - From Robertson County Line to the Mason County Line.	0.000	5.423
(r) US 68 Segment 3 in Mason County:		

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US 68 - From Fleming County Line to US 62 in Washington.	0.000	11.854
US 62 - From KY 2515 to Ohio State Line.	13.381	18.000

Section 11. Identification of FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the FAP system.

	Milepoint	
	From	To
<u>(1) Adair County:</u>		
KY 55 - From Cumberland Parkway in Columbia to the Taylor County Line.	10.059	19.006
KY 80 - From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N.	11.775	12.282
KY 61 - From KY 80 in Columbia to Green County Line.	15.248	23.997
<u>(2) Allen County:</u>		
US 231 - From US 31E northwest of Scottsville to Warren County Line.	.000	9.075
US 31E - From Tennessee State Line via Scottsville Bypass to Barren County Line.	.000	19.189
<u>(3) Anderson County:</u>		
US 127 - From Mercer County Line to US 127 Bypass.	.000	2.535
US 127B - From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.	.000	6.656
US 127 - From US 127 Bypass to Franklin County Line.	8.897	11.120
KY 151 - From US 127 Bypass to Franklin County Line.	.000	4.587
<u>(4) Ballard County:</u>		
US 51 - From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.	.000	8.297
US 60 - From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Kevil to McCracken County Line.	.000	16.937
KY 121 - From Carlisle County Line to 4th Street in Wickliffe.	.000	8.609
<u>(5) Barren County:</u>		
KY 70 - From I 65 at Cave City to KY 90.	5.118	5.359
US 68 - From US 31E (South Green Street) to KY 90 at Broadway.	12.577	12.650
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.	9.923	22.022
US 68 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).	11.741	12.577
US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).	1.384	1.461
US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.	1.461	1.516
US 31E - From Allen County Line via Glasgow Bypass to KY 90.	.000	14.849
<u>(6) Bell County:</u>		
US 25E - From Virginia State Line to Knox County Line.	.000	19.714
US 119 - From US 25E to Harlan County Line.	.000	15.756
<u>(7) Bourbon County:</u>		
US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.	.000	15.435
US 68 - From US 27 in Paris via Paris Bypass to Nicholas County Line.	.000	10.814
US 460 - From Scott County Line to Paris Bypass.	.000	7.696
US 68X - From 10th Street via Main Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.	2.583	2.772
US 460 - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line.	9.150	21.933
KY 627 - From Clark County Line via 10th Street to US 68X (Main Street).	.000	9.511
US 460 - From US 68X (Main Street) via 8th Street to US 27 (Paris Bypass).	7.696	9.150
<u>(8) Boyd County:</u>		
US 23 - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line.	.000	21.042
KY 180 - From south limits of I-64 Interchange to US 60.	.627	2.518
US 60 - From KY 180 near Cannonsburg via 13th Street to Winchester Avenue in Ashland.	4.023	12.198
US 23S - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line.	.000	.591
<u>(9) Boyle County:</u>		
KY 34 - From US 150 (Main Street) in Danville via Lexington Road to Garrard County Line.	12.406	17.770
KY 52 - From US 150 to Garrard County Line.	.000	5.114
US 127 - From Lincoln County Line to existing alignment near Bonta Lane.	.000	2.000
US 127 - From proposed alignment near Bonta Lane to south urban limits of Danville.	1.864	2.972
US 127B - From US 127 via the Danville Bypass to US 127 at KY 2168.	.000	5.270
US 127 - From KY 2168 to Mercer County Line.	7.867	9.849
US 127 - From US 127B in Danville via 4th and 3rd Streets to US 150 (Main Street).	2.972	4.957
US 150 - From Washington County Line to US 68 in Perryville.	.000	4.504
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
US 150 - From US 68 in Perryville to Lincoln County Line.	4.495	18.766
US 127 - From US 150 at Maple Street Intersection via Main St. to US 150 at 3rd Street Intersection.	5.495	4.957
US 150B - From US 127 (Hustonville Road) to US 150 (Standford Road).	.000	2.272

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<u>(10) Bracken County:</u>		
KY 9 - From Mason County Line to Pendleton County Line.	.000	19.857
<u>(11) Breathitt County:</u>		
KY 15 - From Perry County Line to Wolfe County Line.	.000	27.505
<u>(12) Breckinridge County:</u>		
KY 259 - From Grayson County Line to KY 79.	.000	7.901
KY 79 - From KY 259 to US 60.	5.294	14.990
KY 3199 - From Hancock County Line to US 60X (Business).	.000	1.056
US 60X - From KY 3199 to US 60.	.000	2.500
US 60 - From US 60X (Business) via the Hardinsburg Bypass to the Meade County Line.	3.500	31.788
<u>(13) Bullitt County:</u>		
US 31E - From Spencer County Line to US 31E Mainline (Main St in Mt. Washington.)	.000	2.913
US 150 - From point on US 31E Mainline via Mt. Washington Bypass to another point on US 31E Mainline.	.000	2.000
US 31E - From proposed Mt. Washington Bypass to Jefferson County Line.	5.320	5.465
<u>(14) Caldwell County:</u>		
US 641 - From Lyon County Line to Crittenden County Line.	.000	4.269
<u>(15) Calloway County:</u>		
KY 121 - From US 641 to Graves County Line.	14.075	24.156
US 641 - From Tennessee State Line via Murray to Marshall County Line.	.000	17.444
<u>(16) Campbell County:</u>		
US 27 - From Pendleton County Line to US 27 South.	.000	22.250
US 27 - From US 27 South (York St.) Via new bridge to Ohio State Line.	.000	.400
KY 1120 - From Kenton County Line to York Street.	.000	.668
KY 1998 - From US 27 to KY 8.	2.813	5.014
KY 471 - From US 27 to 471 (Eastbound I-275 Overpasses).	.000	.729
KY 9 - From Pendleton County Line to north limits of I-275 Interchange.	.000	17.978
<u>(17) Carlisle County:</u>		
US 51 - From Hickman County Line to proposed location of the Great River Road.	.000	10.725
US 51 - From a point on US 51 Mainline via the proposed Great River Road to the Ballard County Line.	.000	1.800
US 94 - From Hickman County Line via the proposed Great River Road to proposed US 51.	.000	9.000
KY 121 - From Graves County Line to Ballard County Line.	.000	9.714
<u>(18) Carter County:</u>		
KY 7 - From Elliot County Line to US 60 in Grayson.	.000	10.865
KY 1 - From US 60 to KY 9.	10.646	11.934
KY 9 - From KY 1 to Lewis County Line.	.000	18.262
<u>(19) Casey County:</u>		
US 127 - From Russell County Line to Lincoln County Line.	.000	23.715
<u>(20) Christian County:</u>		
US 41A - From Tennessee State Line to end of north exit ramp of Pennyryle Parkway.	.000	13.611
US 41LP - From KY 107 to northwest urban limits of Hopkinsville at KY 91/1682.	.000	5.100
KY 3493 - From US 41A at a point south of Hopkinsville to KY 107.	.000	1.892
US 41 - From Todd County Line to southbound exit ramp of the Pennyryle Parkway.	.000	10.325
US 41 - From US 68 to US 68 in Hopkinsville.	11.909	12.441
US 68 - From Trigg County Line to Todd County Line.	.000	21.126
KY 1682 - From US 68 to Pennyryle Parkway.	.000	3.904
<u>(21) Clark County:</u>		
KY 627 - From Madison County Line to KY 1958.	.000	6.360
KY 1958 - From KY 627 to north limits of the I64 interchange.	.000	2.860
KY 627 - From southern limits of I-64 Interchange to Bourbon County Line.	9.154	14.812
<u>(22) Clay County:</u>		
KY 80 - From south limits of interchange ramps of Daniel Boone Parkway to US 421.	7.101	7.537
US 421 - From KY 80 to Jackson County Line.	16.915	32.841
<u>(23) Clinton County:</u>		
KY 90 - From Cumberland County Line to Wayne County Line.	.000	12.816
US 127 - From Tennessee State Line to Russell County Line.	.000	20.967
<u>(24) Crittenden County:</u>		
US 60 - From Livingston County Line to Union County Line.	.000	23.018
US 641 - From Caldwell County Line to US 60.	.000	7.494
<u>(25) Cumberland County:</u>		
KY 90 - From Metcalfe County Line to Clinton County Line.	.000	22.450
KY 61 - From Tennessee State Line to KY 90 West.	.000	13.701
<u>(26) Daviess County:</u>		
Proposed FAP 10 - From US 60 near Maceo to Indiana State Line.	.000	3.800
US 60 - From Owensboro Beltline to US 60 (Lewisport Road).	.000	2.600
US 60 - From US 60 Bypass West of Owensboro to Hancock County Line.	10.179	27.979
US 60B - From US 60 to US 60 (Lewisport Road).	.000	10.212

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US 60S - From KY 54 to Owensboro Beltline.	.000	.500
KY 54 - From US 431 (Frederica Street) east limits of US 60 Bypass Interchange.	.000	2.663
US 431 - From McLean County Line to 2nd Street.	.000	14.670
KY 2245 - From US 431 (Frederica Street) via 5th Street to US 631 (Lewis Street).	.000	.246
US 231 - From US 60 Bypass via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line.	11.243	15.721
KY 2235 - From US 60 via Triplet Street to US 60.	.000	.145
KY 1467 - From US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street.	.000	.234
(27) Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhonda.	.000	4.131
KY 259 - From KY 101 at Rhonda to KY 70 eastbound.	9.242	12.096
KY 70 - From KY 259 southbound to KY 259 northbound.	9.939	12.388
KY 259 - From KY 70 westbound to Grayson County Line.	12.096	22.692
(28) Elliott County:		
KY 7 - From Morgan County Line to Carter County Line.	.000	19.312
(29) Fayette County:		
US 27 - From Jessamine County Line via Nicholasville Road, South Limestone, Euclid Avenue, South Upper, Bolivar, and South Broadway to US 25.	.000	6.941
US 25 - From Main Street via Newtown Pike to KY 922 at Georgetown Street.	14.632	15.237
KY 4 - The entire length of New Circle Road.	.000	19.283
KY 922 - From US 25 (Georgetown Road) via Newtown Pike to north limits of I-75 Interchange.	.000	3.055
US 27 - From KY 4 (New Circle Road) via Paris Pike to Bourbon County Line.	8.450	15.767
US 60 - From Woodford County Line to US 27/68.	.000	8.162
US 68 - From southeast urban limits of Lexington at Jessamine County Line via Harrodsburg Road to KY 4.	.000	3.110
US 421 - From KY 4 via West Main Street to US 25.	.000	1.798
US 25 - From KY 418 via Richmond Road, East Main Street, and West Main Street to US 421.	8.244	14.632
KY 418 - From US 25 to southeast limits of I-75 Interchange.	.000	2.602
(30) Fleming County:		
KY 32 - From Rowan County Line to KY 11 at a point southwest of Flemingsburg.	10.615	28.293
KY 11 - From junction with KY 32 at point southwest of Flemingsburg to Mason County Line.	10.860	17.263
US 68 - From Robertson County Line to Mason County Line.	.000	5.423
(31) Floyd County:		
KY 114 - From Magoffin County Line to KY 1428 in Prestonsburg.	.000	12.430
US 23 - From Pike County Line to KY 114 ramp.	.000	15.389
KY 80 - From Knott County Line to US 23.	.000	14.435
KY 1428 - From KY 114 in Prestonsburg to KY 321 in Prestonsburg.	15.605	16.091
KY 321 - From KY 1428 in Prestonsburg to US 23 south of Auxier.	.000	4.278
US 23 - From KY 321 south of Auxier to Johnson County Line.	21.502	24.014
(32) Franklin County:		
US 127 - From Anderson County Line via Capital Plaza-West Frankfort Connector Wilkerson Boulevard to Owen County Line.	.000	22.098
US 421 - From US 127 (Owenton Road) via Thornhill Bypass to US 460 (Georgetown Road).	3.072	4.520
KY 151 - From Anderson County Line to I-64.	.000	2.222
US 60 - From US 460 at Georgetown Road in Frankfort via Versailles Road to Woodford County Line.	10.716	14.038
US 421 - From US 127 to Henry County Line.	4.520	17.886
US 460 - From US 60 at Versailles Road in Frankfort via Georgetown RD to Scott County Line.	.000	6.114
KY 676 - From US 127 (Lawrenceburg Road) via East-West Connector in Frankfort to US 60 (Versailles Road).	.000	5.287
(33) Fulton County:		
US 51 - From Purchase Parkway to Hickman County Line.	.000	5.472
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
KY 1099 - Fulton Bypass from KY 94 west of Hickman to KY 94 east of Hickman.	.000	2.966
(34) Gallatin County:		
KY 35 - From Owen County Line at Sparta to I-71.	.000	2.128
(35) Garrard County:		
US 27 - From Lincoln County Line to Jessamine County Line.	.000	16.510
KY 34 - From Boyle County Line to US 27.	.000	1.610
KY 1295 - From KY 52 to Madison County Line.	.000	6.928
KY 52 - From Boyle County Line to KY 954.	.000	13.476
KY 954 - From KY 52 to Madison County Line.	.000	7.564
(36) Graves County:		
US 45 - From southern interchange of Purchase Parkway to McCracken County Line.	18.950	31.580
KY 80 - From Purchase Parkway via West Broadway to US 45 at 7th Street in Mayfield.	9.638	11.461

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KY 58 - From US 45 at 7th Street via East Broadway to Marshall County Line.	5.530	14.881
KY 121 - From Calloway County Line via Murray Road and 5th Street to KY 58 at Broadway.	.000	10.623
US 45 - From KY 80 at Broadway via North 8th Street to KY 121 at Housman Street.	17.219	17.952
KY 121 - From US 45 (North 8th Street) via Housman Street to Carlisle County Line.	10.623	22.559
(37) Grayson County:		
KY 259 - From Edmonson County Line to US 62 westbound.	.000	12.954
US 62 - From KY 259 southbound to KY 259 northbound.	20.787	21.296
KY 259 - From US 62-Eastbound to Breckinridge County Line.	12.954	21.459
(38) Green County:		
KY 61 - From Adair County Line to US 68.	.000	8.194
US 68 - From KY 61 southbound to West Hodgenville Avenue in Greensburg.	11.954	13.616
KY 61 - From KY 88 north of Greensburg to Larue County Line.	9.796	24.344
(39) Greenup County:		
KY 8 - From Lewis County Line to KY 8 Spur at South Portsmouth.	.000	1.956
US 23 - From Boyd County Line to south end of US Grant Bridge.	.000	28.760
KY 8 - From KY 8 Spur to US 23 at south limits of U.S. Grant Bridge in South Portsmouth.	1.956	3.023
KY 8S - From KY 8 via Carl Perkins Bridge to Ohio State Line.	.000	.610
KY 10 - From Lewis County Line to the second landward pier from river's edge in Ohio.	.000	12.844
(40) Hancock County:		
US 60 - From Daviess County Line to KY 3199 in Hawesville.	.000	10.782
KY 3199 - From US 60 in Hawesville to another junction with US 60.	.000	3.301
US 60 - From KY 3199 to Squirrel Tail Hollow Road.	13.666	15.220
KY 3199 - From another junction with US 60 to the Breckinridge County Line.	3.301	5.558
KY 69 - From US 60 at Hawesville to Indiana State Line.	14.126	15.018
(41) Hardin County:		
US 31WB - From Western Kentucky Parkway to US 31W.	.202	3.704
US 31W - From US 31W Bypass to Meade County Line.	18.818	33.040
US 31W - From Meade County Line to Jefferson County Line.	33.040	37.143
KY 61 - From Larue County Line to US 31W.	.000	5.309
(42) Harlan County:		
US 119 - From Bell County Line to proposed relocation east of Cumberland.	.000	38.082
US 119 - From a point on the US 119 Mainline near Cumberland to Letcher County Line.	.000	1.100
US 421 - From Virginia State Line to Leslie County Line.	.000	27.632
(43) Harrison County:		
US 27 - From Bourbon County Line to Pendleton County Line.	.000	19.472
(44) Henderson County:		
US 41 - From Pennyriple Parkway to Indiana State Line (north urban limits of Henderson).	13.414	21.193
US 60 - From Union County Line to Henderson Bypass.	.000	8.712
KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennyriple Parkway.	.000	6.201
(45) Henry County:		
KY 55 - From Shelby County Line to KY 22 west in Eminence.	.000	1.408
KY 22 - From KY 55 south to KY 55 north.	7.420	7.522
KY 55 - From KY 22 east to US 421.	1.408	4.490
US 421 - From Franklin County Line to Shelby County Line at Pleasureville.	.000	6.434
US 421 - From Shelby County Line near Pleasureville to Trimble County Line.	6.434	25.144
(46) Hickman County:		
US 51 - From Fulton County Line to Carlisle County Line.	.000	14.451
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
Proposed FAP 94 - From KY 123 at Hailwell to .??	.000	19.095
(47) Hopkins County:		
KY 281 - From east limits of interchange ramps of Pennyriple Parkway to US 41.	.000	.712
US 41A - From US 41 and KY 281 to Webster County Line.	.000	13.278
(48) Jackson County:		
KY 30 - From Laurel County Line to Owsley County Line.	.000	20.919
US 421 - From Clay County Line to Rockcastle County Line.	.000	29.585
(49) Jefferson County:		
US 31W - From Hardin County Line via Dixie Highway, Bernheim Lane, 22nd Street, Dumesnil Street and 21st Street to Main Street.	.000	20.292
US 31W - From 21st Street via Market Street to US 3E at Main and 2nd Streets.	20.292	22.135
US 150 - From Main Street via 21st Street and 22nd Street to I-64.	.000	.741
US 150T - From 22nd Street to 21st Street.	.000	.089
US 31 - From US 31E (Main Street) via George Rogers Clark Bridge to 0.02 mile north of 4th Street in Jeffersonville, Indiana.	.000	1.122
US 31E - From Bullitt County Line to US 31W at Main and 2nd Streets.	.000	17.814

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<u>KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65.</u>	<u>.000</u>	<u>10.250</u>
<u>(50) Jessamine County:</u>		
<u>US 27 - From the Garrard County Line to Fayette County Line.</u>	<u>.000</u>	<u>15.070</u>
<u>US 68 - From Mercer County Line to Fayette County Line.</u>	<u>.000</u>	<u>12.060</u>
<u>(51) Johnson County:</u>		
<u>US 23 - From Floyd County Line to Lawrence County Line.</u>	<u>.000</u>	<u>18.386</u>
<u>US 460 - From Magoffin County Line to US 23 near Paintsville.</u>	<u>.000</u>	<u>7.700</u>
<u>(52) Kenton County:</u>		
<u>KY 1120 - From I-75 to Campbell County Line.</u>	<u>.000</u>	<u>1.212</u>
<u>(53) Knott County:</u>		
<u>KY 15 - From Letcher County Line to Perry County Line.</u>	<u>.000</u>	<u>9.380</u>
<u>KY 80 - From Perry County Line to Floyd County Line.</u>	<u>.000</u>	<u>20.093</u>
<u>(54) Knox County:</u>		
<u>US 25E - From Bell County Line to Laurel County Line.</u>	<u>.000</u>	<u>26.571</u>
<u>KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed).</u>	<u>.000</u>	<u>2.100</u>
<u>KY 3041 - From 1.621 miles south of US 25E to US 25E.</u>	<u>.000</u>	<u>1.621</u>
<u>(55) Larue County:</u>		
<u>KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line.</u>	<u>.000</u>	<u>13.603</u>
<u>US 31E - From KY 61 south via Hodgenville to Nelson County Line.</u>	<u>6.900</u>	<u>20.725</u>
<u>(56) Laurel County:</u>		
<u>US 25E - From Knox County Line in Corbin to west limits of I-75 ramps.</u>	<u>.000</u>	<u>2.024</u>
<u>US 25 - From Daniel Boone Parkway in London to KY 490.</u>	<u>13.612</u>	<u>16.315</u>
<u>KY 490 - From US 25 to KY 30 at East Bernstadt.</u>	<u>.000</u>	<u>.877</u>
<u>KY 30 - From KY 490 to Jackson County Line.</u>	<u>1.404</u>	<u>9.806</u>
<u>KY 80 - From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.</u>	<u>.000</u>	<u>11.083</u>
<u>KY 192 - From west ramps of I-75 to the Daniel Boone Parkway east of London.</u>	<u>18.190</u>	<u>22.041</u>
<u>(57) Lawrence County:</u>		
<u>US 23 - From Johnson County Line to Boyd County Line.</u>	<u>.000</u>	<u>28.947</u>
<u>KY 645 - From US 23 to Martin County Line.</u>	<u>.000</u>	<u>5.205</u>
<u>(58) Lee County:</u>		
<u>KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.</u>	<u>.000</u>	<u>14.845</u>
<u>(59) Leslie County:</u>		
<u>US 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).</u>	<u>.000</u>	<u>22.613</u>
<u>KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.</u>	<u>.000</u>	<u>3.524</u>
<u>(60) Letcher County:</u>		
<u>KY 15 - From US 119 at Whitesburg to KY 7 North at Isom.</u>	<u>.000</u>	<u>9.230</u>
<u>KY 7 - From KY 15 to KY 15.</u>	<u>13.497</u>	<u>14.157</u>
<u>KY 15 - From KY 7 South in Isom to Knott County Line.</u>	<u>9.230</u>	<u>10.675</u>
<u>US 23 - From Virginia State Line along proposed alignment to US 119 to Pike County Line.</u>	<u>.000</u>	<u>7.000</u>
<u>US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.</u>	<u>.000</u>	<u>27.798</u>
<u>(61) Lewis County:</u>		
<u>KY 9 - From Carter County Line to Mason County Line.</u>	<u>.000</u>	<u>31.218</u>
<u>KY 8C - From KY 10 to KY 8 south of Quincy.</u>	<u>.000</u>	<u>.127</u>
<u>KY 8 - From KY 8C south of Quincy to Greenup County Line.</u>	<u>28.575</u>	<u>36.910</u>
<u>KY 10 - From KY 9 Greenup County Line.</u>	<u>6.788</u>	<u>19.834</u>
<u>(62) Lincoln County:</u>		
<u>US 27 - From Pulaski County Line via Stanford to Garrard County Line.</u>	<u>.000</u>	<u>21.982</u>
<u>US 127 - From Casey County Line via Hustonville to Boyle County Line.</u>	<u>.000</u>	<u>10.847</u>
<u>US 150 - From Boyle County Line to US 150 Bypass.</u>	<u>.000</u>	<u>4.347</u>
<u>US 150B - From US 150 to US 150.</u>	<u>.000</u>	<u>3.522</u>
<u>US 150 - From US 150/US 150 Bypass near Preacherville Road to Rockcastle County Line.</u>	<u>8.705</u>	<u>19.665</u>
<u>(63) Livingston County:</u>		
<u>US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.</u>	<u>.000</u>	<u>29.059</u>
<u>US 62 - From Marshall County Line via Lake City to Lyon County Line.</u>	<u>.000</u>	<u>2.854</u>
<u>(64) Logan County:</u>		
<u>US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.</u>	<u>.000</u>	<u>12.135</u>
<u>US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.</u>	<u>.000</u>	<u>26.567</u>
<u>US 431 - From Tennessee State Line to Muhlenberg County Line.</u>	<u>.000</u>	<u>31.898</u>
<u>(65) Lyon County:</u>		
<u>US 62 - From Livingston County Line to US 641 at Fairview.</u>	<u>.000</u>	<u>10.465</u>
<u>US 641 - From US 62 at Fairview to Caldwell County Line.</u>	<u>.000</u>	<u>5.715</u>
<u>(66) McCracken County:</u>		
<u>US 45 - From Graves County Line via Lone Oak Road and Jackson Street to US 60 East (Jackson Street).</u>	<u>.000</u>	<u>10.820</u>
<u>US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.</u>	<u>.000</u>	<u>13.544</u>

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US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Beltline Highway, and Division Street to the Livingston County Line.	13.544	20.028
US 62 - From US 60 to US 68.	12.881	15.513
US 68 - From US 62 to Marshall County Line.	.000	2.677
(67) McCreary County:		
US 27 - From Tennessee State Line to Pulaski County Line.	.000	22.252
KY 90 - From US 27 to Whitley County Line.	.000	11.920
(68) McLean County:		
US 431 - From Muhlenberg County Line to Daviess County Line.	.000	11.573
(69) Madison County:		
KY 1295 - From Garrard County Line to KY 52.	.000	4.529
KY 52 - From KY 1295 via Lancaster Avenue to KY 876.	5.444	10.910
KY 954 - From Garrard County Line to KY 21.	.000	.139
KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.	6.176	9.115
US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.	2.863	3.810
KY 21 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.	9.115	14.196
KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).	7.097	10.755
US 25 - From US 421 via Big Hill Avenue to KY 876.	11.960	15.500
US 421 - From US 25 to Rockcastle County Line.	.000	13.031
US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.	.000	3.900
US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.	19.188	20.158
KY 627 - From US 25 west of I-75 to Clark County Line.	.000	6.118
(70) Magoffin County:		
US 460 - From Mountain Parkway to KY 114.	12.546	14.635
KY 114 - From US 460 to Floyd County Line.	.000	5.026
US 460 - From Morgan County Line to Mountain Parkway West.	.000	12.546
US 460 - From KY 114 to Johnson County Line.	14.635	20.426
(71) Marion County:		
US 68 - From Taylor County Line to KY 55 (Walnut St.).	.000	10.690
KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St. Marys Road).	.000	.389
KY 49 - From KY 55 (St. Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).	17.815	17.968
KY 55 - From KY 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line.	.389	4.669
(72) Marshall County:		
KY 58 - From Graves County Line to KY 80.	.000	2.156
KY 80 - From KY 58 to US 68.	.000	16.926
US 68 - From McCracken County Line to Trigg County Line.	.000	28.085
US 641 - From Calloway County Line to US 62.	.000	19.422
US 62 - From I-24 to Livingston County Line.	8.805	12.081
US 641S - From US 641 to Purchase Parkway.	.000	3.519
(73) Martin County:		
KY 645 - From KY 40 at a point west of Inez Bypass to KY 3 northbound south of Inez.	4.682	6.605
KY 3 - From KY 645 westbound via Inez Bypass to KY 645 eastbound.	9.709	10.019
KY 645 - From KY 3 southbound via Inez Bypass to KY 40 southeast of Inez.	6.605	7.632
KY 40 - From KY 645 southeast of Inez to West Virginia State Line.	11.900	20.280
KY 645 - From Lawrence County Line to KY 40 at a point west of Inez.	.000	4.682
(74) Mason County:		
KY 11 - From Fleming County Line to KY 9.	.000	8.452
US 68 - From Fleming County Line to US 62 in Washington.	.000	11.854
US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.	12.672	18.000
KY 9 - From Lewis County Line to Bracken County Line.	.000	19.554
KY 546S - From KY 9 to Ohio State Line via proposed New Bridge.	.000	4.600
(75) Meade County:		
US 31W - From Hardin County Line to Hardin County Line.	.000	3.827
US 60 - From Breckinridge County Line to US 31W.	.000	15.644
KY 144 - From US 60 to KY 448 near Buck Grove.	25.390	28.665
KY 448 - From KY 144 to KY 1051 (Brandenburg Bypass).	.000	4.392
KY 1051 - From KY 448 via Brandenburg Bypass to KY 79.	.000	2.218
KY 79 - From KY 1051 via Brandenburg Bypass to Indiana State Line.	8.237	9.912
(76) Menifee County:		
US 460 - From Montgomery County Line to Morgan County Line.	.000	19.750
(77) Mercer County:		
US 127 - From Boyle County Line via Danville Road to US 68.	.000	4.402
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
US 127 - From US 68 to Anderson County Line.	4.402	17.150
(78) Metcalfe County:		

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<u>KY 90 - From Barren County Line to Cumberland County Line.</u>	<u>.000</u>	<u>11.719</u>
<u>(79) Montgomery County:</u>		
<u>US 460 - From Bourbon County Line to KY 686 (Mount Sterling Bypass).</u>	<u>.000</u>	<u>8.289</u>
<u>KY 686 - From US 460 (Maysville Road) via Mount Sterling Bypass to US 460 (Frenchburg Road) at south urban limits of Mount Sterling.</u>	<u>.000</u>	<u>3.460</u>
<u>US 460 - From south urban limits of Mount Sterling to Menifee County Line.</u>	<u>10.702</u>	<u>22.151</u>
<u>(80) Morgan County:</u>		
<u>KY 7 - From US 460 in West Liberty to Elliot County Line.</u>	<u>.000</u>	<u>11.683</u>
<u>KY 203 - From Wolfe County Line to US 460.</u>	<u>.000</u>	<u>3.761</u>
<u>US 460 - From Menifee County Line via West Liberty to Magoffin County Line.</u>	<u>.000</u>	<u>28.634</u>
<u>(81) Muhlenberg County:</u>		
<u>US 431 - From Logan County Line to McLean County Line.</u>	<u>.000</u>	<u>27.779</u>
<u>(82) Nelson County:</u>		
<u>US 31E - From Larue County Line via New Haven Road, Cathedral Street, and Stephen Foster Avenue to Spencer County Line.</u>	<u>.000</u>	<u>27.588</u>
<u>US 62 - From US 31E to US 150.</u>	<u>14.294</u>	<u>14.653</u>
<u>US 150 - From US 62 to Washington County Line.</u>	<u>.000</u>	<u>7.682</u>
<u>(83) Nicholas County:</u>		
<u>US 68 - From Bourbon County Line to Robertson County Line.</u>	<u>.000</u>	<u>12.211</u>
<u>(84) Owen County:</u>		
<u>US 127 - From Franklin County Line to KY 35 at Bromley.</u>	<u>.000</u>	<u>24.687</u>
<u>KY 35 - From US 127 to Gallatin County Line.</u>	<u>.000</u>	<u>4.132</u>
<u>(85) Owsley County:</u>		
<u>KY 30 - From Jackson County Line to KY 11-North.</u>	<u>.000</u>	<u>11.206</u>
<u>KY 11 - From KY 30 to Lee County Line.</u>	<u>14.227</u>	<u>17.307</u>
<u>(86) Pendleton County:</u>		
<u>US 27 - From Harrison County Line to Campbell County Line.</u>	<u>.000</u>	<u>19.422</u>
<u>KY 9 - From Bracken County Line to Campbell County Line.</u>	<u>.000</u>	<u>4.339</u>
<u>(87) Perry County:</u>		
<u>KY 15 - From Knott County Line at Vicco to Breathitt County Line.</u>	<u>.000</u>	<u>25.179</u>
<u>KY 80 - From KY 15 to Knott County Line.</u>	<u>7.910</u>	<u>15.862</u>
<u>(88) Pike County:</u>		
<u>US 23 - From Letcher County Line along proposed alignment to four lane east of Dorton.</u>	<u>.000</u>	<u>4.200</u>
<u>US 23 - From KY 610 at Dorton via Pikeville to Floyd County Line.</u>	<u>6.589</u>	<u>35.123</u>
<u>US 119 - From US 23 north of Pikeville to West Virginia State Line.</u>	<u>.000</u>	<u>29.748</u>
<u>US 460 - From US 23 north of Shalbiana to Virginia State Line.</u>	<u>.000</u>	<u>25.445</u>
<u>(89) Powell County:</u>		
<u>KY 11 - From Wolfe County Line to Mountain Parkway.</u>	<u>.000</u>	<u>3.504</u>
<u>(90) Pulaski County:</u>		
<u>US 27 - From McCreary County Line to Lincoln County Line.</u>	<u>.000</u>	<u>30.693</u>
<u>KY 80B - From US 27 to KY 80.</u>	<u>.000</u>	<u>2.315</u>
<u>KY 80 - From KY 80 Bypass to Laurel County Line.</u>	<u>21.636</u>	<u>40.393</u>
<u>KY 90 - From Wayne County Line to US 27.</u>	<u>.000</u>	<u>4.169</u>
<u>KY 461 - From KY 80 to Rockcastle County Line.</u>	<u>.000</u>	<u>8.441</u>
<u>(91) Robertson County:</u>		
<u>US 68 - From Nicholas County Line to Fleming County Line.</u>	<u>.000</u>	<u>1.357</u>
<u>(92) Rockcastle County:</u>		
<u>US 150 - From Lincoln County Line to US 25 in Mount Vernon.</u>	<u>.000</u>	<u>10.511</u>
<u>US 25 - From I-75 to US 150.</u>	<u>11.764</u>	<u>13.882</u>
<u>US 421 - From Jackson County Line to Madison County Line.</u>	<u>.000</u>	<u>.601</u>
<u>KY 461 - From Pulaski County Line to US 25.</u>	<u>.000</u>	<u>9.404</u>
<u>US 25 - From KY 461 to I-75.</u>	<u>15.018</u>	<u>15.678</u>
<u>(93) Rowan County:</u>		
<u>KY 32 - From Fleming County Line to south limits of I-64 interchange.</u>	<u>.000</u>	<u>5.784</u>
<u>(94) Russell County:</u>		
<u>US 127 - From Clinton County Line to Casey County Line.</u>	<u>.000</u>	<u>26.998</u>
<u>(95) Scott County:</u>		
<u>US 460 - From Franklin County Line to proposed Georgetown Bypass near Great Crossings.</u>	<u>.000</u>	<u>7.100</u>
<u>Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.</u>	<u>.000</u>	<u>3.400</u>
<u>US 460B - From US 25 via US 460 (Georgetown Bypass) to US 62/US 460.</u>	<u>.000</u>	<u>2.891</u>
<u>US 460 - From US 62/US 460B to Bourbon County Line.</u>	<u>8.583</u>	<u>15.421</u>
<u>(96) Shelby County:</u>		
<u>KY 55 - From I-64 to southwest urban limits of Shelbyville via Taylorsville Road and Boone Station Road to Henry County Line.</u>	<u>6.246</u>	<u>17.850</u>
<u>US 60 - From KY 55 South (Taylorsville Road) via Midland Trail and Main Street to KY 55 North (Boone Station Road).</u>	<u>8.589</u>	<u>11.398</u>
<u>KY 53 - From I-64 to US 60 (Frankfort Road) via Mt Eden Road.</u>	<u>6.180</u>	<u>7.978</u>

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US 421 - From Henry County Line to Henry County Line.	.000	.661
(97) Simpson County:		
US 31W - From south limits of I-65 Interchange to KY 100.	2.300	6.488
KY 100 - From US 31W Mainline to the I-65 ramps east of I-65.	9.675	12.875
(98) Spencer County:		
US 31E - From Nelson County Line to Bullitt County Line.	.000	2.433
(99) Taylor County:		
KY 55 - From Adair County Line to US 68 (Broadway).	.000	10.293
US 68 - From KY 55 via Broadway to Marion County Line.	4.939	13.600
(100) Todd County:		
US 41 - From Tennessee State Line to Christian County Line.	.000	12.458
US 79 - From Tennessee State Line to Logan County Line.	.000	10.606
US 68 - From Christian County Line to Logan County Line.	.000	14.060
(101) Trigg County:		
US 68 - From Marshall County Line to Christian County Line.	.000	28.224
(102) Trimble County:		
US 421 - From Henry County Line to US 42 South.	.000	6.704
US 42 - From US 421 South in Bedford to US 421 North in Bedford.	8.078	8.249
US 421 - From US 42 North to Indiana State Line.	6.704	19.287
(103) Union County:		
KY 56 - From Illinois State Line to proposed Morganfield Bypass.	.000	11.600
KY 56 - From existing US 56 via proposed Bypass to US 60.	.000	1.400
US 60 - From Crittenden County Line to proposed Morganfield Bypass.	.000	15.500
US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield.	.000	2.900
US 60 - From proposed Bypass east of Morganfield to Henderson County Line.	18.100	26.069
KY 109 - From Webster County Line to US 60.	.000	1.536
(104) Warren County:		
KY 101 - From I-65 to US 31W.	7.861	11.641
US 31W - From KY 101 south to KY 101 north.	27.869	28.557
KY 101 - From US 31W to Edmonson County Line.	11.641	12.850
US 68 - From Logan County Line to US 31W.	.000	13.060
US 31W - From US 68 to KY 446 Overpass.	14.670	17.569
KY 446 - From US 31W to I-65.	.000	1.090
KY 880 - From KY 185 to US 68.	.000	5.128
KY 185 - From KY 880 to US 68.	.000	.292
US 231 - From Allen County Line to I-65.	.000	9.106
(105) Washington County:		
KY 55 - From Marion County Line to US 150.	.000	4.551
KY 555 - From US 150 to north end of Bluegrass Parkway Interchange.	.000	14.738
US 150 - From Nelson County Line to Boyle County Line.	.000	21.359
(106) Wayne County:		
KY 90 - From Clinton County Line to Pulaski County Line.	.000	25.235
(107) Webster County:		
US 41A - From Hopkins County Line to KY 670.	.000	1.324
KY 670 - From US 41A to KY 109.	.000	2.712
KY 109 - From KY 670 to Union County Line.	2.876	14.664
(108) Whitley County:		
KY 90 - From McCreary County Line to US 25W.	.000	8.328
US 25W - From KY 90 to east limits of I-75 ramps.	22.183	29.677
KY 90 - From US 25W along proposed alignment to Knox County Line.	.000	2.000
(109) Wolfe County:		
KY 15 - From Breathitt County Line to KY 191.	.000	9.515
KY 15S - From KY 15 to Mountain Parkway.	.000	1.054
KY 11 - From Lee County Line to Powell County Line.	.000	5.317
KY 191 - From KY 15 Spur to KY 203.	.000	10.342
KY 203 - From KY 191 to Morgan County Line.	.000	1.323
(110) Woodford County:		
US 60 - From Franklin County Line to Fayette County Line.	.000	13.039

Section 12. No Encroachment Permits for Vegetation Control. An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5:150 for the clearing or trimming of any vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 13. Material Incorporated by Reference. Material incorporated by reference as a part of this administrative regulation

may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, 11th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The business hours are 8 a.m. to 4:30 p.m. eastern time on week-days.

J.M. YOWELL, P.E., State Highway Engineer
DON C. KELLY, P.E., Secretary

ADMINISTRATIVE REGISTER - 1382

APPROVED BY AGENCY: December 11, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 29, 1996 at 3 p.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All owners of outdoor advertising devices 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: Public comment hearing was not held. However, we don't anticipate that the changes proposed in this administrative regulation will cause any change in the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comment hearing was not held. However, we don't anticipate that the changes proposed in this administrative regulation will cause any change in the cost of living or employment.

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

1. First year following implementation: The application form for a billboard permit has been changed. The change will more clearly establish what is a "commercially or industrially developed area" and is consistent with Kentucky's Bonus Agreement. The applicant for a permit in a commercially or industrially developed area as allowed by KRS 177.860, otherwise known as Kerr areas, will have to determine the use of the property in 1960 as well as the present time to ensure that the location is eligible for the construction of a billboard.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None as a result of the changes to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to review all requests for billboard permits.

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

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: Will be implemented state-wide. See below.

(b) Kentucky: The decision not to allow trees on state right of way which are growing in front of billboards according to persons who advertise on or own billboards and who testified at or submitted comments to the public comment hearing will have a detrimental economic impact on their businesses. They testified that a certain percentage of their businesses can be directly attributed to billboard advertisements. If the growth on state right of way hides the advertisement, that portion of the business will be lost. However, others pointed out that there are very few billboards with growth that hides even a portion of the advertisement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered whether permits should be issued to allow trees or other vegetation on state right of way to be cut if the vegetation is blocking a billboard or other advertising device. This alternative was denied because of the strong outpouring of public sentiment against the tree-trimming. The Transportation Cabinet considered not making an amendment to the definition of "commercially and industrially developed area" but decided that it was needed because of the issues around the definition which keep being raised in court cases.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Since many of the participants at the public comment hearing considered cutting trees in front of billboards to be an environmental issue, not changing the policy of "no tree cutting" will benefit the environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Unlikely to be detrimental - just no longer receive the benefits.

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Since the Bonus Agreement with the Federal Highway Administration governs much of what Kentucky can or cannot do regarding outdoor advertising devices, the Transportation Cabinet has incorporated it by reference as a part of this administrative regulation.

(11) TIERING: Is tiering applied? Yes. Tiering is applied since there are less stringent standards for the placement of billboards adjacent to FAP highways when compared to the interstate and parkway highways. In addition, there are less stringent standards for on-premise signs when compared to off-premise signs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 750 and the Bonus Agreement executed by the Federal Highway Administration and the Kentucky Department of Highways. In addition, 23 USC 131 establishes the prohibition against erecting new billboards on scenic highway.

2. State compliance standards. Outdoor advertising devices are controlled on the interstate highways, parkways and federal aid primary highways. Interstates and parkways are treated the same with more control imposed on those highways. No new billboards are allowed to be constructed on highways which are FAP, interstate, or parkway which are also designated as scenic.

3. Minimum or uniform standards contained in the federal

mandate. Outdoor advertising devices are mandated to be controlled on the interstate highways, parkways and federal aid primary highways. The parkways are required to be treated as federal aid primary highways and less control is required in "Cotton Areas" on interstate highways. Cotton Areas are those areas with a commercial or industrial use and where the state owned the highway right-of-way prior to 1956. Scenic highways which are FAP, interstate, or parkways shall not have new billboards erected along them.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is more than one federal mandate operating here. The basic mandate is the federal Highway Beautification Act governed by 23 CFR Part 750. However, Kentucky is one of the states which voluntarily agreed in 1961 to stricter controls on outdoor advertising devices within 660 feet of interstate and parkway highways. Kentucky received over \$2.5 million in bonus payments since entering into the Bonus Agreement with FHWA. Violation of the agreement would cause those funds plus others spent in removing billboards to be repaid to the federal government. In addition, Kentucky has not allowed the less stringent controls in "Cotton Areas". This would require an act of the General Assembly as well as requiring the Commonwealth to pay back much federal money received under the bonus agreement.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. This [These] product[s] were was approved by the Plumbing Code Committee at their August 7, 1995 ~~May 22, 1995~~ meeting.

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates,

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Inc.

(e) Little Giant Pump Company, Drainsaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Deklite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitacclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN,

PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

17. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480, all requiring an approved pressure and temperature relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a saffing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through eighteen (18) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: December 1, 1995

FILED WITH LRC: December 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 23, 1996 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There will be no impact on the cost of living or employment with this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Provides ability of manufacturer to market his product in the state.

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(4) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

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

(6) 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

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were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable with this amendment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable with this amendment.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:090. Soil, waste and vent systems.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in all types of plumbing systems. This amendment is necessary to provide for the addition of future plumbing fixtures without the cost of breaking up concrete, and to adjust the code requirements to reflect the reduction in water usage. (See Sections 6(2) and 7 of this administrative regulation.) ~~delete obsolete manufacturing specifications and replace with current specifications in Section 6 of this administrative regulation, and to clarify that up to three (3) water closets can discharge into any three (3) inch line (not just vertical stacks) in Section 7 of this administrative regulation.]~~

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) Stacks shall be supported at their bases and all pipes shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of all vertical stacks and at all trap branches as close to the trap as possible.

(5) Polyethylene pipe and fittings must be continuously supported with a V channel.

(6) Stacks shall be rigidly supported at their bases and at the floor level.

Section 2. Change in Direction. Changes in direction shall be made by the appropriate use of forty-five (45) degree wyes, half-wyes

(1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bends, except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees. Double sanitary tees may be used on vertical soil, waste and vent lines.

Section 3. Prohibited Fittings. Double hub bends and double hub tees or inverted hubs shall not be used on sewers, soil or waste line. The drilling and tapping of house sewers or house drains, soil, waste or vent pipes, and the use of saddle hubs and bands shall be prohibited. Pipes shall be installed without hubs or restrictions that reduce the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, dead ends shall not be used without special permission from the department.

Section 5. Protection of Material. Pipes passing under or through walls shall be protected from breakage. Pipes passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing produced and labeled as ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade G or H produced and labeled as ASTM A-312, polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891, acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90, D-1788-73 or F-628, silicon iron or borosilicate.

(2) All mains or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section. Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4		172 [96]
5		342 [180]
6		576 [420]
8		1600 [1200]
10		2900 [2400]
12		4600 [4200]

Water closets shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

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Section 8. Soil, and Vent Stacks. Building in which plumbing fixtures are installed shall have a soil or waste and vent stack, or stacks extending full size through the roof. Soil or waste and vent stacks shall be as direct as possible and free from sharp bends or turns. The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that no more than three (3) water closets shall discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with all other sections of this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain shall be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. Soil and waste stacks and branches shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. Fixture connections to water closets, floor outlet pedestal sinks, pedestal urinals, or other similar plumbing fixtures shall be either cast iron, lead, brass, copper, or plastic closet bends. Three (3) inch closet bends shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building where the soil, waste and vent piping is not extended undiminished through the roof or where there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. Fixture connections shall not be made to a lead bend or a branch of a water closet or a similar fixture. Vent pipes above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. Roof extensions of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extensions shall not be less than five (5) feet above the roof. Stacks of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by

a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate windows within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. Fixture traps shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. Crown vents shall not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for water closets and similar fixtures, shall not be below the dip of the trap, and all ninety (90) degree turns in the waste line of the main waste, soil, or vent pipes shall be washed. Fixture traps shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. When a main vent or vent stack is used, it shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. This section shall not apply to one (1) and two (2) story installations. If it becomes necessary to increase a vertical vent stack, it becomes a main vent and shall comply with other sections of this administrative regulation.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stacks shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, when necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS

Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for residential installations, if a fixture opening is

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installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste systems, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. Vent and branch vent pipes shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. Where vent pipes connect to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe must rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. Vents shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. Where two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with the other sections of this administrative regulation.

Section 26. Floor Drain Individual Vent not Required. Manufacturers' floor drains shall not require individual vents when placed on a waste line for floor drains only within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack. Open receptacles may be connected to floor drain lines without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. Floor drains and service sinks installed on the operational floor level of sewage and water treatment plant facilities which discharge into an open sump and are not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. House drains shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipes shall discharge into an open sink or another approved open receptacle that is properly supplied with water

in accordance with other sections of this administrative regulation. The connections shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. Bar and soda fountain wastes, sinks and receptacles shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. Food storage compartment drains shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. Floor receptors or floor sinks installed specifically for the indirect wastes from tilting braising pans, tilting kettles and other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground when it discharges into a septic system.

Section 32. Refrigerator Wastes. Refrigerator waste pipes shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. Corrosive liquids shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with the other sections of this administrative regulation and all fixtures shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated when a pit has a ventilated cover.

(3) If under certain conditions a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) Fixture branches exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) Fixture connections shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink and two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings produced and labeled as ASTM

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D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. Flat or wet vents serving a plumbing fixture shall be constructed only with special permission from the department when a plumbing system is being remodeled or when additions are added to an original system; except that flat vents in new construction may also be allowed in commercial buildings when the design of the building prohibits the type of venting required by other sections of this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. Basement floor drains shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation. EXEMPTION: Basement floor drains, in single family dwellings, shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation is also exempt from the waste, trap and venting provisions of the State Plumbing Code.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: December 7, 1995

FILED WITH LRC: December 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 23, 1996 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: All licensed master and journeyman plumbers.

(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:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Slight increase in cost of initial installation but great savings when fixtures are added to the systems. Only a few cents per foot difference between 1 1/2 inch and 2 inch pipe.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Not applicable.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Cost savings should be realized in many instances when fixtures are to be added to a plumbing system.

(b) Kentucky: Same impact possible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.

(8) Assessment of expected benefits: Not applicable with this amendment.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied in that different pipe sizes are required for different runs of pipe and the more fixtures attached to a waste vent, the larger the pipe.

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

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

RELATES TO: KRS 205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: KRS 186.570, 194.050, 205.710 to 205.800, 405.520

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

Section 1. Collection of Maintenance. Agency efforts shall include collecting maintenance if it meets the definition of "duty of support" in

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KRS 205.710(5).

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method:

1. As the primary tool for child support collection; and
2. As necessary to facilitate enrollment of a child through an employer in available health insurance.

(b) For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the child support order.

(c) If an absent parent has more than one (1) child support wage assignment against him, the child support agency shall allocate amounts available for withholding, giving priority to the current child support obligation amount due each family.

(d) If current support and an arrearage amount is owed and is to be paid through a wage withholding order, and no specified arrearage payment amount is ordered by the court, the cabinet shall determine the arrearage payment by multiplying the current court or administratively ordered obligation amount by twenty-five (25) percent.

(e) If the absent parent no longer owes a current child support payment, the cabinet shall determine:

1. The arrearage amount to be paid by wage withholding;
2. The frequency of payment; and
3. The arrearage payment to be equal to the last court or administratively ordered obligation amount.

(f) An absent parent shall not be obligated to pay current support when parental rights have been terminated or when all children of a particular order are emancipated.

(g) No amount of an employee paid share of the cost of health insurance shall be deducted if, after child support and maintenance are deducted:

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or
2. Only a portion of the monthly amount needed to purchase health insurance is available.

(h) ~~[(e)]~~ If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(i) ~~[(f)]~~ To comply with the advance notice requirements of KRS 405.467(4), the agency shall notify the absent parent within fifteen (15) calendar days of the request for wage withholding in writing that:

1. He has ten (10) days to contest the withholding;
2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and
3. Withholding shall apply to the current and any subsequent employer.

(j) ~~[(g)]~~ In addition to the requirements of KRS 405.467(5)-(11), the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

1. The employer shall forward collected child support amounts to the child support agency and collected medical insurance premiums to the health insurance carrier within ten (10) working days of the date the amount is withheld from the absent parent's wages;

2. The employer shall include on the transmittal to the child support agency the name and Social Security number of the absent parent, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the child support agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each absent parent;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the absent parent terminates employment and provide the

following information:

a. The absent parent's last known address; and

b. The name and address of the new employer, if known.

(k) ~~[(h)]~~ The absent parent shall keep the child support agency informed of his current employer, if he has access to health insurance coverage at a reasonable cost and the health insurance policy information.

(l) ~~[(i)]~~ The child support agency shall extend the withholding system to include withholding from wages derived in this state although the support order was issued by another state.

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the absent parent is employed to implement interstate withholding.

2. The notice shall contain:

a. The amount requested to be withheld;

b. The arrearage amount; and

c. A copy of the child support and medical support order.

3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the absent parent's employer shall:

a. Send notice to the absent parent within fifteen (15) calendar days of locating the absent parent or his employer;

b. Provide the absent parent with the opportunity to contest the withholding; and

c. Send notice to his employer and to the absent parent.

5. The child support agency shall notify the state in which the custodial parent resides when the absent parent is no longer employed in the state and provide the state with both the absent parent's and new employer's name and address, if known.

6. Except for when the withholding shall be implemented in the state where the support order is filed, the laws and procedures of the state where the absent parent is employed shall apply.

(m) ~~[(j)]~~ The child support agency shall terminate wage withholding procedures when there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The child support agency, through an agreement with the state employment security agency, shall provide withholding of a child support obligation from an absent parent receiving unemployment compensation under the following conditions:

1. An absent parent who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding if:

a. An agreement is signed by the absent parent; or

b. A notice of claim of intent to withhold is completed by the child support enforcement agency when the absent parent fails to sign an agreement to withhold within fifteen (15) calendar days; and

c. No mistake in fact or law is proven which causes the absent parent to be found not owing.

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the absent parent.

(3) Federal tax refund (offset).

(a) Past-due child support, medical support payments (if a specified dollar amount is included in the order) maintenance, and foster care related support shall qualify for offset if:

1. There is a court ordered or administratively established support obligation;

2. There has been an assignment of support to the child support agency;

3. The arrearage equals at least \$150 and shall have been delinquent at least three (3) months;

4. The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6. The child support agency shall verify the accuracy of the absent parent's name and social security number.

(b) Past due child support, medical support or maintenance in a nonpublic assistance case shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the child support agency is enforcing the order;

2. The arrearage shall be equal to no less than \$500 dollars and may not include fees, court costs, or any other non child support debt owed to the state or to the family;

3. The child support agency shall have verified the accuracy of the arrearage and have a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. The arrearage shall be owed on behalf of a child who lives with the client and who is a minor as of December 31 of the year in which the case is submitted for offset;

5. The child support agency shall calculate an assigned arrearage;

6. The child support agency shall verify the accuracy of the absent parent's name and social security number.

(4) State income tax refund (offset).

(a) An AFDC, foster care, or medical support arrearage which is owed by any person who is required to provide medical support for a child who is eligible for medical assistance (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The absent parent's name and social security number are known;

3. The arrearage is at least twenty-five (25) dollars; and

4. The arrearage has been verified as accurate.

(b) A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 2(3)(b) of this administrative regulation is met and arrearages are not less than \$150.

Section 3. Aid to Families with Dependent Children (AFDC) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of AFDC shall:

(a) Be made payable to the child support agency; and

(b) Be reported to the AFDC agency within ten (10) working days of the end of the month in which the support is received.

(2) A child support payment that makes the AFDC family ineligible for AFDC shall be reported to the child support agency by the AFDC agency.

(a) If the family is ineligible for an AFDC payment, the child support agency shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for an AFDC payment or if a hearing is requested:

1. The AFDC agency shall notify the child support agency; and

2. The child support agency shall distribute the collection as specified in Section 3(7) of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the child support agency.

(4) A payment received in the month after ineligibility for AFDC is determined but prior to the last assistance payment being issued shall be used:

(a) To reimburse the state for any assistance paid; and

(b) To pay any excess to the family.

(5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the child support agency shall:

(a) Determine the collected amount the family would have received; and

(b) Forward any amount in excess of the assistance payment to the family.

(6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made.

(7) The amount collected in a month on behalf of the AFDC family up to the first fifty (50) dollars shall be distributed to the AFDC family within fifteen (15) days of the date of initial receipt by the agency.

(a) If the collected amount is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

(b) If the collected amount exceeds fifty (50) dollars, only fifty (50) dollars shall be paid to an AFDC family receiving support.

(c) If the collected amount represents payments from two (2) or more absent parents, only the first fifty (50) dollars shall be paid to the AFDC family.

(d) If the amount collected represents a payment for a prior month and is received by the child support agency in the month it is due, up to the first fifty (50) dollars shall be paid to the family.

(e) If the amount collected represents a payment for a prior month and is received by the child support agency in the month in which it is due, but the collection is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the child support agency; and

(2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Tax Refund Intercept. (1) Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the AFDC family or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by an absent parent and the appeal is resolved, payment shall be made to the family or refunded to the absent parent within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) If the absent parent contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support or medical support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) If the collected amount is less than fifty (50) dollars, the responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the AFDC assistance payment.

(3) Collection of child support in the month after the month the family receives its last AFDC assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) When the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of liens on personal or real property when an arrearage is equal to or greater than one month's obligation;

(b) Report to credit bureaus; and

(c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license.

(2) Within the context of the provisions of KRS 205.768, the Cabinet for Human Resources:

(a) Shall inform the credit reporting agency of a child support arrearage in each case referred for federal tax refund intercept; and

(b) May inform the credit reporting agency of a child support arrearage in any case which did not meet criteria for federal tax refund intercept because the parent's social security number is unknown.

(3) Advance notice of the release of the information required by KRS 205.768(2) shall be given to the absent parent in the preoffset letter of information concerning the federal tax refund intercept.

(4) An absent parent whose case shall not be certified for federal tax refund intercept but may be reported to a consumer reporting agency shall receive prior notice of the past due amount of child support and of the right to request an administrative review within thirty (30) days of the receipt of the notice.

(a) If the preoffset letter is returned and location services are unsuccessful, that individual shall be deleted from the list sent by the child support agency.

(b) If location services are successful, his name may be added to an updated list.

(c) An identifying list of absent parents is forwarded to the credit reporting agency the January following the certification year.

(5) Denial or suspension of driver's license.

(a) As a remedy of last resort when all other civil remedies either do not apply or have been tried and have failed, including judicial remedies, the cabinet shall:

1. Identify a case with a verified arrearage equal to one (1) year's obligation amount which accrued beginning January 1, 1994 or thereafter; and

2. Send by first class mail to an absent parent who holds a valid Kentucky driver's license and who has the ability to pay support:

a. A notice of intent to request denial or suspension of a driver's license; and

b. An absent parent answer to notice of intent.

3. Notify the absent parent that the only basis for resolution of the dispute shall be:

a. The arrearage is incorrect and does not equal or exceed the amount of support owed for one (1) year;

b. The wrong individual has been identified;

c. A bond is posted for the total arrearage which has accrued since January 1, 1994;

d. A payment agreement is entered into by the absent parent to pay current support, plus a specified monthly payment amount on the total arrearage which has accrued since January 1, 1994. The monthly payments shall be:

(i) Fifty (50) percent if the arrearage owed is less than \$1,000; or

(ii) \$500 plus twenty-five (25) percent of the amount over \$1,000 if the arrearage is not less than \$1,000 and not greater than \$2,000; or

(iii) \$750 plus ten (10) percent of the amount over \$2,000 if the arrearage is \$2,000 or more; or

e. The absent parent pays the total arrearage which has accrued since January 1, 1994.

(b) To assure delivery of the notice of intent, the cabinet shall refer the case for parent locator service if the notice is returned and the forwarding address is unknown;

(c) If the absent parent requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the absent parent answer to notice of intent form within twenty (20) calendar days of the notification date, the cabinet shall:

1. Within ten (10) working days of the absent parent's response, schedule and hold an interview with the absent parent;

2. Attempt to resolve the dispute at the time of the interview; and

3. Forward the absent parent's written request for a hearing to the agency responsible for conducting the dispute hearing.

(d) The child support agency shall inform the agency responsible for conducting the hearing that:

1. A resolution has been reached as a result of the interview and a written request from the absent parent to withdraw the hearing request shall be sent; or

2. A resolution to the dispute has not been reached and the hearing request remains in effect.

(e) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's decision, the child support agency shall notify the Transportation Cabinet of the request for the denial or suspension of the driver's license, unless:

1. The absent parent makes full payment of the total arrearage that may have accrued since January 1, 1994;

2. The absent parent enters into a payment agreement to pay current support, plus the [a] specified amount on the total arrearage which accrued since January 1, 1994 as determined by paragraph (d) of this subsection; or

3. The absent parent posts a bond for the total arrearage which has accrued since January 1, 1994.

(f) If the case does not qualify for submittal to the Transportation Cabinet, a notice to deny or suspend the driver's license shall not be sent.

(g) If the absent parent does not contest the arrearage or after the interview and hearing process, the case qualifies for submittal to the Transportation Cabinet, the Cabinet for Human Resources shall refer the name of the absent parent to the Transportation Cabinet for the denial or suspension of the driver's license, unless:

1. The absent parent makes full payment of the arrearage within twenty (20) calendar days of the interview by the Cabinet for Human Resources;

2. The absent parent posts a bond within twenty (20) calendar days of the interview for the total arrearage which accrued since January 1, 1994; or

3. The absent parent enters into a payment agreement to pay current support, plus the [a] specified amount on the total arrearage

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which has accrued since January 1, 1994 as determined by paragraph (d) of this subsection.

(i) The Cabinet for Human Resources shall notify the Transportation Cabinet to reinstate or reissue a previously suspended or revoked driver's license if:

1. The absent parent makes full payment of the arrearage;
2. The absent parent posts a bond for the total arrearage amount;

or

3. The absent parent:

a. Makes a good faith payment which equals three (3) months' current support; and

b. Enters into a payment agreement to pay the [current support, plus a] specified amount on the remaining [total] arrearage which has accrued since January 1, 1994 as determined by paragraph (d) of this subsection. [-and makes a good faith payment which equals three (3) months' current support.]

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.450 ~~[405.440]~~ as described in 904 KAR 2:400, Section 4.

Section 11. Material Incorporated by Reference. (1) Forms necessary for the collection and distribution of child support and medical support are incorporated effective February 15, 1995. These forms include:

- (a) CS-111, revised 5/89;
- (b) CS-63, issued 2/95;
- (c) CS-78, revised 5/89;
- (d) CS-44, issued 2/95;
- (e) CS-148, revised 10/93;
- (f) CS-149, revised 10/93;
- (g) CS-122, revised 7/94;
- (h) CS-123, revised 7/94.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: November 29, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1996 at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in being heard at this hearing shall notify this agency in writing by January 17, 1996, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation sets forth the procedures for collection and distribution of child support payments. This regulation also includes the procedures by which the denial or suspension of drivers' licenses occur when a child support arrearage of one year accumulates beginning January

1, 1994, and sets forth the formula for a repayment schedule for child support arrearage amounts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First Year following implementation: An increase in paperwork will be realized by child support offices and legal representatives. No additional costs should be incurred by the clients.

2. Second and subsequent years: An increase in paperwork will be realized by child support offices and legal representatives. No additional costs should be incurred by the clients.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 1995: 5 staff and related cost - \$156,400; 2 hearing officers and related costs - 62,600; system costs - 84,000; Policy costs - 46,900; new form cost - 1,000; postage - 2,100; total - 353,000.

2. Continuing costs or savings: 1996: 5 staff and related cost - \$164,300; 2 hearing officers and related costs - 65,800; forms - 1,500; postage - 2,200; total - 223,800.

3. Additional factors increasing or decreasing costs: It is anticipated collections will increase as a result of this new procedure. The additional collections retained by the state is anticipated to be \$385,200. If these projections hold, the collections will offset the cost by SFY 1996.

(b) Reporting and paperwork requirements: An increase in paperwork will be realized by child support offices and legal representatives.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funding-66%; agency funding-34%

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no other alternative methods. The formula developed for repayment schedule falls within the allowable percentage reflected by the Federal Consumer Protection Act and provides a methodology by which an absent parent may eliminate the revocation or denial of his driver's licenses.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation amendment will provide for arrearage payments, and will provide the noncustodial parent owing child support a method by which he may avoid the revocation or denial of his driver's license.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No potential for a detrimental effect is anticipated.

(c) If detrimental effect would result, explain detrimental effect: No potential for a detrimental effect is expected.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. These provisions are not federally mandated.

2. State compliance standards. This regulation is being amended to conform with HB 311 of the 1994 General Assembly.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will not affect local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not affect local governments.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect local governments.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 1995

KENTUCKY LOTTERY CORPORATION
(New Administrative Regulation)

202 KAR 3:040. Internal audit procedures.

RELATES TO: KRS Chapter 154A

STATUTORY AUTHORITY: KRS 154A.060(2)(c)

NECESSITY AND FUNCTION: 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 financial 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. This administrative regulation establishes the system of continuous internal audits for the Kentucky Lottery Corporation.

Section 1. Definitions. (1) "Audit committee" means the Audit Committee of the board, as shall be constituted from time to time by the board.

(2) "Board" means the Board of Directors of the corporation as established by KRS 154A.030.

(3) "Internal audit department" means the department head of internal audit, together with other employees of the corporation as may be designated from time to time by the president of the corporation and approved by the audit committee.

Section 2. Audit Committee. (1) The audit committee shall be organized in the following manner:

(a) The audit committee shall consist of no less than two (2), nor more than three (3), members of the board, in addition to the chairman of the board who shall serve as an ex-officio member.

(b) Members of the audit committee shall be appointed by the chairman of the board and serve until the earliest of:

1. Their resignation or removal from the board;
2. The expiration of their terms as members of the board; or
3. Their resignation or removal from the audit committee by majority vote of the board at a duly constituted meeting thereof.

(c) In appointing members to the audit committee, the chairman of the board shall give preference to the appointment of those members of the board who are certified public accountants, certified internal auditors, or who otherwise possess expert knowledge in auditing, accounting, business or commerce.

(d) The members of the audit committee shall select a chairman from its members.

(2) Meetings of the audit committee shall be as follows:

(a) Meetings shall be held at such times and places as the chairman of the audit committee deems appropriate; however, no more than two (2) regular meetings of the board shall occur between meetings of the audit committee.

(b) One (1) or more members of the internal audit department, and, if requested by the audit committee, one (1) or more members of the corporation's management shall be present at meetings of the audit committee. At the end of each meeting, if open, the audit committee shall reconvene in closed session, if required and if statutorily permitted, at which members of the internal audit department may be present, but from which members of the corporation's management shall be excused.

(c) One (1) or more members of the audit committee shall have the authority to meet with employees of the corporation, independent auditors, the auditor of public accounts or any of their designees. In their sole discretion, the members of the audit committee may include or exclude the corporation's management from, or may request that

the corporation's management leave, any meeting.

(d) Any employee of the internal audit department may request a private meeting with the chairman of the audit committee.

(3) The audit committee shall provide general oversight of the operations and financial reporting processes of the corporation. In particular, the audit committee shall perform, on an ongoing basis, the following duties:

(a) Review the adequacy of the corporation's system of internal control;

(b) Review the activities, organizational structure and qualifications of the individual members of the internal audit department;

(c) Review the findings made from time to time by the internal audit department;

(d) Assist the president and, as appropriate, members of the internal audit department in the hiring, evaluation and promotion of the personnel in the internal audit department;

(e) Assist the Auditor of Public Accounts in the selection of independent auditors to perform external audits of the corporation, review the proposed audit scope and approach of the independent auditors, and conduct a post audit review of the financial statements and audit findings of the independent auditors, including, without limitation, any comments or recommendations provided to management by the Auditor of Public Accounts or the independent auditors;

(f) Review the monitoring of compliance by the management of the corporation with the corporation's code of conduct and all applicable statutes, administrative regulations and opinions governing the ethical behavior of the corporation or its employees, including KRS 154A.080 and the Legislative Branch Ethics Code;

(g) Review the policies and procedures in effect for the review of expenses and perquisites of the officers of the corporation;

(h) Review with the corporation's general counsel and, if deemed appropriate, with the corporation's outside counsel, any legal matters which could have a significant impact on the corporation's financial statements;

(i) Review the findings of any examinations of the corporation or its operations by regulatory agencies;

(j) Institute special investigations, if deemed appropriate by the members of the audit committee, hiring such special outside counsel or experts and utilizing the services of any employees, officers or directors of the corporation as the audit committee may require to conduct the special investigations; and

(k) Perform other oversight functions as may be requested from time to time by the board.

(4) The audit committee shall report to the board.

Section 3. Internal Audit Department. (1) In order to assist the president, the audit committee and the management of the corporation, the internal audit department shall furnish objective analyses, appraisals, recommendations and information concerning the operations of the corporation. More specifically, the internal audit department shall perform the following duties:

(a) Review the operations of the corporation to assure compliance with the systems, policies and procedures established to ensure conformity with the laws and administrative regulations of the Commonwealth and other applicable governmental entities;

(b) Review the operations of the corporation to assure compliance with the systems, policies and procedures established by the corporation;

(c) Review the reliability and integrity of financial and operating information;

(d) Review and evaluate the means of safeguarding the assets of

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the corporation and, as appropriate, verify the existence and ownership of the assets by the corporation;

(e) Appraise the economy and efficiency of the corporation in the use of resources;

(f) Advise the management of the corporation and the board on the accounting, financial and operational policies, procedures and systems;

(g) Coordinate, supplement and evaluate examinations of the corporation's activities by outside auditors, accountants and other review teams; and

(h) Perform other oversight functions as may be requested from time to time by the audit committee or by the board.

(2) The internal audit department shall report to the president for administrative purposes but shall report the results of its work directly to the audit committee.

(3) The internal audit department shall perform audits in the following manner:

(a) Prior to the end of each fiscal year, the department head of internal audit shall submit a proposed detailed internal audit plan for the next fiscal year for approval by the president and the audit committee, and the department head shall initiate audits pursuant to the approved plan, as may be revised from time to time with the approval of the president or the audit committee.

(b) Internal audit work shall be performed in accordance with standards established by the Institute of internal auditors, as may be revised from time to time, and shall include:

1. Planning the audit;
2. Examining and evaluating the information;
3. Communicating results; and
4. Follow-up.

(4) The internal audit department shall be notified in all cases if assets of the corporation have been, or are thought to have been, lost through defalcation or other security breaches in the financial or operating systems. Immediately upon receipt of any notification, the department head of internal audit shall request that the department head of security notify the proper authorities of the potential loss and shall proceed with an investigation. If the investigation reveals a loss, the internal audit department will identify the weakness in financial or operating procedures which enabled the loss to occur and shall recommend to the president and the audit committee improvements to the procedures to correct the weakness.

(5) The internal audit department shall have unrestricted access to all activities, records, properties and personnel applicable to any area of the corporation under review. The department head of internal audit shall develop a policy to assure the confidentiality of all matters reviewed, unless disclosure is required by law or these internal audit procedures.

(6) The internal audit department and its members shall have no direct authority over, and no responsibility for, any of the activities reviewed by it. In addition, the internal audit department and its members shall not develop or install procedures, prepare records, or engage in any other activity which could be reasonably construed to compromise its independence. If an event or a situation occurs in which the internal audit department participates in an activity which might be construed as compromising its independence, the activity shall be reviewed by an independent external auditor, if deemed necessary by the board or the audit committee.

(7) The internal audit department shall coordinate its efforts with those of the Auditor of Public Accounts and other external auditors which may be employed to achieve comprehensive, cost-effective audit coverage.

(8) Each auditor in the internal audit department shall obtain continuing education credits annually in areas relating to accounting issues and auditing techniques, as determined by the head of the internal audit department. Compliance with this requirement shall be monitored by the head of the internal audit department.

ARTHUR L. GLEASON, JR., President and CEO

APPROVED BY AGENCY: December 14, 1995

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

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 31, 1996, at 10 a.m., at the corporate headquarters of the Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271. Persons interested in attending the hearing shall notify the agency representative designated below, in writing, by January 26, 1996, five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing will be open to the public, and any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless it is requested in writing, with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the public hearing, you may still submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to Michael J. Denney, Attorney, Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40206-3271.

Contact Person: Michael J. Denney, Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205, (502) 473-2360.

REGULATORY IMPACT ANALYSIS

Contact person: Michael J. Denney, Attorney

(1) Type and number of entities affected: This regulation will affect the Kentucky Lottery Corporation, its board of directors and its department of internal audit.

(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 the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No 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 the proposed 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: 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. The Kentucky Lottery Corporation is already conducting internal audits. This proposed regulation will codify the practice by administrative regulation as required by KRS 154A.060(2)(c).

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Kentucky Lottery Corporation is already conducting internal audits. This proposed regulation will codify the practice by administrative regulation as required by KRS 154A.060(2)(c).

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administrative regulation will be implemented and enforced with agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative 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 administrative 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 proposed environmental 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 proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, rule, administrative regulation or governmental policy appear to conflict, overlap or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. The proposed administrative regulation only applies to the Kentucky Lottery Corporation, its board of directors, and its internal audit department.

DEPARTMENT OF AGRICULTURE
Division of Pesticides
(New Administrative Regulation)

302 KAR 31:040. Storage and handling of pesticides and fertilizers for commercial agrichemical storage facilities.

RELATES TO: KRS Chapter 217B, 40 CFR, 49 CFR, 7 USCA 135 et.seq., 42 USCA 9601

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY AND FUNCTION: To regulate the storage and handling of pesticides and fertilizers for commercial agrichemical storage facilities.

Section 1. Definitions. (1) "Agrichemical" means pesticides or fertilizers, at an agrichemical facility but does not include anhydrous ammonia fertilizer material.

(2) "Agrichemical storage facility" means any site where liquid pesticide, dry pesticide, liquid bulk fertilizer, or dry bulk fertilizer is stored, mixed, repacked, or transferred from one (1) container to another.

(3) "Approved" means approval by an agent of the Kentucky Department of Agriculture, except where otherwise stated.

(4) "Best management practices" means schedules of activities,

prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water to the Commonwealth. Best management practices also includes treatment requirements, operating procedures, practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(5) "Bulk fertilizer" means either dry or liquid fertilizer in any unpackaged quantity.

(6) "Bulk pesticide" means any pesticide which is nonmobile or held in an individual container in undivided quantities of greater than 300 U.S. gallons of liquid measures or 300 U.S. pounds of net dry weight.

(7) "Bulk repackaging" means the transfer of a pesticide from one (1) bulk container (containing undivided quantities) of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight to an approved mobile container (containing undivided quantities) of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight in an unaltered state in preparation for sale of distribution.

(8) "Bulk storage container" see "storage container".

(9) "Closed system refillable container" means any container specifically designed to be returned to and refilled by the manufacturer or authorized agent.

(10) "Commercial" means buying and selling agrichemicals, fertilizers or agrichemical services for compensation.

(11) "Elephant ring" see "temporary operational containment".

(12) "Field operations" means the application of fertilizer of pesticides to soil or plants in the course of normal agricultural or horticultural practices.

(13) "Impregnation" means the application of pesticides onto fertilizer.

(14) "Lead agency" means that there is one (1) governing agency that will be responsible for the enforcement of these rules. The Kentucky Department of Agriculture, Division of Pesticides, is the designated lead agency.

(15) "Liquid fertilizer" means fertilizer in fluid form, and includes solutions, emulsions, suspensions, and slurries but does not include anhydrous ammonia.

(16) "Load" or "loading" means the transfer of pesticides or bulk fertilizer from the storage facility to transport vehicles, application equipment, or mobile containers.

(17) "Low pressure nitrogen solutions" means an aqueous solution of ammonium nitrate or urea or other nitrogen carriers, containing various quantities of free ammonia exceeding two (2) percent by weight. Aqua ammonia and nonpressure nitrogen solutions commonly referred to as twenty-eight (28) percent, thirty (30) percent, or thirty-two (32) percent nitrogen solutions are excluded from this definition.

(18) "Minibulk pesticides" means an amount of liquid pesticide greater than fifty-five (55) U.S. gallons but not greater than 299 U.S. gallons, or an amount of dry pesticide greater than 100 U.S. pounds but not greater than 299 U.S. pounds that is held in undivided quantities in a mobile container designed for handling and transport.

(19) "Mobile containers" means containers designed and used for transporting pesticide and fertilizer materials.

(20) "New agrichemical facility" means a commercial agrichemical facility, not in existence at the time of adoption of these rules, or existing facilities which undergoes modification where the fixed cost of construction exceeds fifty (50) percent of the fixed capital cost of a comparable, entirely new facility and such modifications occurs within a two (2) year period.

(21) "Nonmobile container" means all containers not defined as mobile.

(22) "Operational area" means any area where operational activities take place, including the loading, unloading, repackaging, mixing, impregnation and transferring of pesticides or fertilizers and the rinsing, washing or cleaning of pesticide and fertilizer application

equipment.

(23) "Operational area containment" means any structure or system designed and constructed to effectively intercept and contain operational spills of fertilizer and pesticides including rinsate, wash water or rain water resulting from any operational activity defined and approved for an operational area.

(24) "Package pesticides" means all other pesticides not defined as bulk or minibulk pesticides.

(25) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed or other form of plant or animal life, or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for the use as a plant regulator, defoliant or desiccant.

(26) "Portable operational containment" means any structure or system with a capacity greater than 100 U.S. gallons designed and constructed with the capability of movement between operational sites and to intercept and contain discharges from operational activities including the loading, unloading, repackaging, impregnation, and transfer of pesticides or fertilizer and the rinsing, washing or cleaning of pesticide and fertilizer application equipment.

(27) "Primary containment" means the storage of bulk pesticides, fertilizer or rinsate in storage containers at a storage facility.

(28) "Reportable discharge" means an uncontrolled release outside an operational area containment or secondary containment structure that equals or exceeds the reportable quantity (RQ) for those substances.

(29) "Reportable quantity" or "(RQ)" means a quantity that equals or exceeds the reportable quantity for substances listed in the Appendix to 49 CFR 172.101 or in Appendix A of 40 CFR 355.

(30) "Reportable substance" means any substance listed in the Appendixes to 49 CFR 172.101 or in Appendix A of 40 CFR 355.

(31) "Reportable release" see "reportable discharge".

(32) "Rinsate" means water or other liquid contaminated or otherwise, resulting from the washing of equipment, operational areas, or containers used in the application of loading, unloading, mixing, transferring or storing of any fertilizer or pesticide.

(33) "Roofed" means protected from precipitation and any subsequent drainage.

(34) "Secondary containment" means any structure, including dikes, liners, etc., used to contain product spills from primary bulk storage containers, and prevent runoff or leaching.

(35) "Spill" see "reportable discharge".

(36) "Storage container" means a container used for the storage of fertilizer or pesticides. A storage container includes a rail car, nurse tank, or other mobile container used for the storage of bulk fertilizers or pesticides. The definition of a "storage container" does not include:

(a) A mobile container storing fertilizer or pesticide at a storage facility for less than fifteen (15) days, if this storage is incidental to the loading or unloading of a storage container at the storage facility.

(b) A container used solely for temporary emergency storage of leaking fertilizer or pesticide containers.

(c) Any mobile or nonmobile container utilized for the storage of anhydrous ammonia.

(37) "Temporary operational containment" or "elephant rings" means a storage container with an open top that has storage capacity of no less than twenty-five (25) U.S. gallons nor more than 100 U.S. gallons and is used for recovering spillage and leakage from transfer connections and pumps.

(38) "Storage facility (bulk)" means all commercial agrichemical facilities at which bulk or minibulk pesticides and bulk fertilizer is stored.

(39) "Underground" means any storage container or combination of storage containers, including underground pipes connected to such storage which is used to contain an accumulation of pesticide, fertilizer, or rinsate.

(40) "Unload" or "unloading" means the transfer of formulated

pesticide or bulk fertilizer in an unaltered state from the transport vehicle into the storage facility.

Section 2. Scope and Application. (1) All commercial agrichemical storage facilities shall comply with these rules.

(2) All commercial agrichemical storage facilities subject to Super Fund Amendments Preauthorization Act (SARA) Act, 42 USCA 9601 shall be in full compliance by the required dates, and each facility shall promptly and accurately complete the required annual reporting forms.

(3) All commercial agrichemical storage facilities shall register within ninety days after the adoption of these rules with the Kentucky Department of Agriculture, Division of Pesticides, defining the scope of the existing operations and facilities.

Section 3. Compliance Schedule. (1) Commencing upon the date of the adoption of these rules, all new commercial agrichemical storage facilities shall come under immediate compliance of these rules and there will be no compliance schedule in effect. Best management practices will be utilized.

(2) Commencing upon the date of the adoption of these rules, all existing facilities shall implement the following compliance schedule. Best management practices will be utilized.

(a) Commencing upon the date of adoption of these rules, all dry fertilizer materials shall be stored in a manner to prevent pollution by practically minimizing losses to the air, surface water, underground water or subsoil.

(b) Commencing one (1) year after the adoption date of these rules, all nonmobile bulk pesticide storage containers shall be located within an impervious secondary containment.

(c) Commencing two (2) years after the adoption date of these rules, all blending or mixing points of impregnation (where pesticides are applied onto fertilizer) shall be located within an impervious operational containment.

(d) Commencing three (3) years after the adoption date of these rules, all loading, unloading, repacking, and transferring of bulk or minibulk pesticides and liquid bulk fertilizer shall be performed within an impervious operational containment.

(e) Commencing three (3) years after the adoption of these rules, all rinsing, washing and cleaning of pesticide or fertilizer application equipment shall be located within an impervious operational containment.

(f) Commencing four (4) years after the adoption of these rules, all nonmobile bulk liquid fertilizer storage containers shall be located within an impervious secondary containment.

(g) Commencing five (5) years after the adoption of these rules, all loading, unloading, mixing and handling of dry fertilizer, unless performed in the field of application shall be performed in an impervious operational containment.

Section 4. Operational Area Site Specifications. (1) New permanent containment areas and operational areas located in a flood plain shall be protected from inundation by floods.

(2) New permanent containment areas and operational areas shall be located a minimum of 100 feet from on-site wells and sinkholes, 200 feet from private domestic wells, and 400 feet from any community wells used as a public water source.

(3) Each site shall comply with all ordinances and regulations enacted by local governmental agencies unless such ordinances and regulations directly conflict with the Division of Pesticides administrative regulations. Should regulatory conflicts develop between state agencies, or state and local regulations, the Department of Agriculture, Division of Pesticides and their administrative regulations shall prevail.

Section 5. Primary Containment. (1) Basic requirements.

(a) Storage containers and appurtenances shall be constructed,

installed and maintained so as to prevent the discharge of liquid fertilizer or pesticides.

(b) Storage containers and appurtenances shall be constructed or materials which are resistant to corrosion, puncture, or cracking and compatible with the product being stored.

(c) Metals used for valves, fittings, repairs on metal containers shall be compatible with the materials used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion which may weaken the storage container or its appurtenances, or create a risk of discharge.

(d) Storage containers and appurtenances shall be designed to handle all operating stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage containers and appurtenances may be subjected in the foreseeable course of operations.

(e) Storage containers must be properly labeled according to 7 USCA 135 et seq.

(2) Prohibition against underground storage and plumbing.

(a) The storage of liquid fertilizer or pesticide in an underground storage container, or the use of underground plumbing shall be prohibited. This prohibition does not apply to a watertight catch basin used for the temporary collection of run-off or rinsate from containment or operational areas which is emptied within seventy-two (72) hours of use.

(3) Abandoned containers.

(a) Storage containers and other containers used at a storage facility to hold liquid bulk fertilizer or pesticide, or pesticide and fertilizer rinsate are considered abandoned if they have been out of service for more than six (6) months because of a weakness or leak, or have been out of service for any reason for more than two (2) years and no integrity tests have been performed.

(b) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be secured, and all valves or connections shall be severed or sealed.

(c) A secondary containment facility is not considered abandoned merely because there have been no discharges into the secondary containment facility.

(4) Prohibited materials.

(a) Storage containers and appurtenances may not be constructed of copper, brass, zinc, or copper base alloys.

(b) Storage containers and appurtenances used for the storage of liquid fertilizers containing phosphate or chlorides may not be constructed of aluminum alloys.

(c) Storage containers and appurtenances used for the storage of low pH (<5) liquid fertilizers may not be constructed of ferrous materials other than stainless steel unless the materials are coated or treated with protective substances.

(d) Storage containers and appurtenances used for the storage of low pressure nitrogen solutions may not be constructed of mild steel, fiberglass, polyolefins, or plastic. This prohibition does not extend to nonpressure solutions commonly referred to as twenty-eight (28) percent, thirty (30) percent or thirty-two (32) percent nitrogen solutions. This prohibition against the use of mild steel does not extend to aqua ammonia.

(e) Storage containers and appurtenances used for the storage of phosphoric acid may not be constructed of ferrous materials other than stainless steel unless the container is lined with a suitable substance.

(f) Storage containers and appurtenances used for the storage of liquid fertilizers containing potassium chloride (muriate of potash) may be constructed of ferrous materials if the following provisions are met:

1. The containers and appurtenances are coated or treated with protective substances.

2. The container or appurtenance is used for storage periods of not more than six (6) months, and is completely emptied between storage periods, and the empty containers and appurtenances are cleaned and inspected for leaks prior to being refilled for any

subsequent period.

(5) Filling storage containers. Storage containers may not be filled beyond the capacity for which they are designed, taking into account the density of the liquid being stored and thermal expansion during storage.

(6) Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces which may be encountered in the ordinary course of operations. Underground pipes and fittings are prohibited except as specified in Section E, number 2(a)(1).

(7) Liquid level gauging device.

(a) Every storage container shall be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauge device is not required if the level of liquid in a storage container can be readily and reliably measured by other means.

(b) Liquid level gauging devices shall be secured, in a safe manner, to protect against breakage or vandalism which may result in a discharge.

(c) External sight gauges are prohibited.

(8) Venting. Storage containers are to be vented to manufacturer's specifications for the product being stored in the container.

(9) Inspection and maintenance. Inspections shall be conducted to assure the early detection of cracks and other defects that may compromise the integrity of the secondary containment facility. Repairable defects that occur in a secondary containment structure must be sealed or repaired immediately.

Section 6. Secondary Containment. (1) All agrichemical nonmobile storage containers for liquid pesticides and liquid fertilizer shall be located within a secondary containment structure.

(2) Basic requirements for the secondary containment of liquid pesticides and liquid fertilizer include:

(a) Floors and walls of secondary containment structures shall be constructed of concrete, concrete block, (capped and filled with concrete), steel or other impervious materials which are compatible with the product being stored.

(b) Floors and walls of secondary containment structures which contain pesticides shall be constructed of materials which will maintain their structural integrity under fire conditions.

(c) Secondary containment structures shall not have relief outlets or release valves.

(d) The use of underground storage containers or plumbing as (or used in conjunction to) secondary containment is prohibited.

(e) Secondary containment for liquid agrichemical storage shall provide for the separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing between the fertilizer area shall provide for the interception and recovery including clean-up of pesticide spills. The entire secondary containment area shall meet or exceed the total capacity requirements specified in Section F.

(f) Secondary containment structures shall be cleaned and rinsed after any agrichemical spill or leakage within seventy-two (72) hours.

(g) Inspections shall be conducted to assure the early detection of cracks and other effects that may compromise the integrity of the secondary containment facility. Repairable defects that occur in a secondary containment structure shall be sealed or repaired immediately.

(h) Containers, pipes, hose and valves must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles.

(i) Clay, natural soil clay mixtures or clay or bentonite mixtures shall not be used to contain any bulk pesticide.

(j) Temporary operational containment (elephant rings) shall not be used as secondary containment for any bulk pesticide.

(k) Secondary containment structures shall include a sump or collection point for temporary collection of spillage, leakage, rinsate or other residues. Any sump or collection point shall not be greater

than two (2) feet deep nor contain more than 109 U.S. gallons.

(3) Secondary containment structures shall provide the following capacity:

(a) When not protected from receiving precipitation, the containment shall have a minimum containment volume of a six (6) inch rain storm, plus 100 percent of the capacity of the largest tank, and the volume displaced by the bases of the other tanks located within the secondary containment structure.

(b) When protected from receiving precipitation, the containment shall have a minimum containment volume of 100 percent of the capacity of the largest tank, plus the volume displaced by the bases of the other tanks located within the secondary containment structure.

(4) The following are the general requirements for secondary containment of liquid fertilizer. Secondary containment shall be provided which meets or exceeds the requirements in Section F, number 2 in addition to the following requirements.

(a) Secondary containment structures shall be constructed to a water permeability rate of 1×10^{-6} centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of 1×10^{-5} centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid.

(b) Synthetic materials or liners may be used as secondary containment structures provided they are compatible with agrichemicals being contained and it is installed according to manufacturer's recommendations. These directions and recommendations shall become records maintained at the facility site.

(c) Earthen walls used for secondary containment of fertilizer shall be protected against erosion (e.g., sodded and seeded). Side slopes shall not exceed a three (3) to one (1) ratio of horizontal to vertical. The top width of earthen walls shall not be less than two and one-half (2 1/2) feet.

(d) Provisions shall be made for safe emergency access and exit to and from the secondary containment structure.

(e) Floors shall be constructed to allow the safe and expeditious removal of precipitation water and any spilled liquid to a collection point.

(f) Soil liners used for secondary containment of fertilizer may be constructed of suitable soil or soil treated with bentonite clay or other comparable material, with a minimum depth of twelve (12) inches provided the other requirements stated in this section are met. The liner shall be covered by a soil or smooth aggregate layer not less than six (6) inches thick and shall be maintained to prevent cracking or puncture.

(h) Prefabricated secondary containment structures shall be composed of a rigid prefabricated basin having both a base and walls constructed of steel, reinforced concrete or synthetic liner or synthetic materials which are resistant to corrosion, puncture or cracking.

(5) Exemptions from secondary containment.

(a) A liner need not be installed directly under a storage container having a capacity of 100,000 gallons or more which has been constructed on site and put into use prior to the effective date of these rules, provided that all the following conditions are met:

1. A second bottom made of steel shall be constructed for the storage container. The second bottom of steel shall be placed over the original bottom and a layer of smooth fine gravel or coarse sand having a minimum thickness of three (3) inches shall be installed between the layers; and

2. The original bottom of the storage container shall be tested for leaks before the sand layer or second bottom is installed. A record of the test shall become records maintained at the facility site; and

3. The newly constructed bottom shall be tested for leaks before any liquid fertilizer is stored on the newly constructed bottom. A record of the test shall become records maintained at the facility site; and

4. There shall be a method by which leaks from the newly

constructed bottom into the sand layer may be readily detected with the exception of storage containers constructed of nonferrous materials which have a protection system in place consisting of synthetic liners or monitoring system.

(6) The secondary containment requirements under this section do not apply to rail cars which are periodically transferred to and from storage.

(7) Agrichemical facilities with secondary containment on site and in place on the date of adoption of these rules shall be exempted if the following conditions are met:

(a) All requirements specified in Section E are met; and

(b) All requirements specified in Section F, number 2 are met; and

(c) A minimum secondary containment capacity of 110 percent of the largest container, plus the volume displaced by the other tanks located within the secondary containment structure.

Section 7. Operational Containment. (1) All transfer of pesticides and liquid fertilizer between containers including loading, unloading, repackaging, impregnating, mixing, and equipment cleaning performed at a commercial agrichemical facility shall be done on an impervious pad with an operational containment system designed to intercept, retain and recover accidental spillage, leakage, rinsate and residues.

(2) The basic requirements for permanent operational containment structures (for pesticides and liquid fertilizers) consisting of floors, curbs, and walls include:

(a) Materials of construction and the design of containment structures shall be compatible with the products handled and be maintained in a condition to retain recovered material until it is used or properly disposed of.

(b) Operational containment structures shall be constructed of reinforced concrete or other impervious materials compatible with the products being handled.

(c) Permanent operational containment structures shall be sealed or otherwise maintained to provide a rate of permeability not to exceed 1×10^{-6} centimeters per second.

(d) Inspections shall be conducted to assure the early detection of cracks and other defects that may compromise the integrity of the operational containment structure. Repairable defects that occur in an operational containment structure shall be sealed or repaired immediately.

(e) Stormwater drainage shall be diverted away from any operational containment structure. Subsurface stormwater drainage is permitted.

(f) Operational containment structures shall include a sump or collection point for the temporary collection of spillage, leakage, rinsate, or other residues. Any sump or collection point shall not be greater than two (2) feet deep nor contain more than 109 U.S. gallons.

(g) Operational containment structures shall not have relief outlets or release valves.

(h) Operational containment pads or structures shall be large enough in area to prevent spillage onto unprotected areas and to prevent any release to the surrounding environment.

(i) The use of underground storage or plumbing as (or used in conjunction to) operational containment is prohibited.

(j) Operational containment structures shall provide for the separation of pesticide and fertilizer spillage, leakage, washwater or rinsate into compatible combinations to allow for easier, safer and more effective disposal. Management of operational containment areas shall meet or exceed the requirements specified in Section H.

(3) Operational containment structures shall provide the following capacity:

(a) Operational containment for roofed permanent structures shall be constructed with a volume sufficient to contain a minimum of 1,000 U.S. gallons. Containment capacity of the sump is figured in addition to the containment capacity of the structure; and

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(b) Operational containment for unroofed permanent structures shall be constructed with a volume sufficient to contain a minimum of 1,250 U.S. gallons. Containment capacity of the sump is figured in addition to the containment capacity of the structure.

(4) Portable operational containment may be utilized to meet the requirements of this section if the following conditions are met:

(a) Containment capacity provided by the portable structure shall be equal to or greater than the volume of the largest container being loaded, unloaded, repackaged, mixed, impregnated or otherwise transferred. Portable operational containment shall have a minimum capacity of greater than 100 U.S. gallons.

(b) Portable operational containment may be used provided materials of construction are compatible with products handled and a written copy of the manufacturer's installation directions, compatibility statement, and expected life expectancy are forwarded to the lead agency prior to the use of such structure. These documents shall become records maintained at the base facility.

(c) All requirements specified in Section G, number 2 are met.

(d) All requirements specified in Section H are met.

(5) Temporary operational containment (elephant rings) may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from transfer connections and pumps.

Section 8. Dry Bulk Pesticide. All agrichemical nonmobile storage containers for dry bulk pesticides shall be located within a secondary containment structure. The minimum requirements for dry bulk pesticide storage shall:

(1) Be segregated from other containment areas; and

(2) Be segregated by a six (6) inch curb of an area that extends at least two (2) feet beyond the perimeter of the walls of the storage container.

Section 9. Dry Fertilizer Storage and Handling. (1) Dry fertilizer materials shall be stored and handled in a manner to prevent pollution by minimizing losses to the air, surface water, underground water or subsoil.

(2) Nonliquid fertilizers shall be stored inside a structure or device having a cover or roof top, sidewalls and base sufficient to prevent contact with precipitation and surface waters.

(3) All loading, unloading, mixing and handling of dry fertilizer, unless performed in the field of application, shall be located within an operational area. The operational area structure shall be of a size and design that will contain fertilizer. Any collected material shall be applied at agronomic fertilizer rates or otherwise recycled.

(4) Dry fertilizer blending operations, including the process of impregnating fertilizer material with pesticides, shall be conducted in a manner to provide for the total collection and reuse of any spilled fertilizer.

Section 10. Containment Management. (1) Agrichemicals, agrichemical residues, rinsates, and agrichemical contaminated wash water recovered from the secondary and operational containment facilities shall be field applied at agronomic rates, used in a liquid mixing operation, or otherwise recycled or disposed of in accordance with these rules. Any pesticide laden residues, rinsates, and pesticide contaminated wash water that are to be land applied shall be handled in accordance with the product's labels. Field application of diluted pesticide solutions is an acceptable use if the total annual application amounts of the pesticide do not exceed the pesticide label application rates. Rinsates and pesticide contaminated wash water may be used to make up the total spray mixture if the mixture does not exceed the pesticide label application rates.

(2) Best management practices shall be taken to keep rinsate, and other recovered material segregated by compatible uses.

(3) Uncontaminated precipitation collected can be discharged from containment areas. Contaminated precipitation must be applied

to labeled target areas, or disposed of in other approved methods.

(4) Recovered or rinsate material collected in a containment system shall not be declared to be hazardous waste until it is determined that the rinsate or other recovered material cannot be applied to a labeled target area.

(5) Rinsate or recovered material that cannot be applied to a labeled target use becomes hazardous waste and must be handled and disposed of consistent with hazardous waste and solid waste regulations in effect.

Section 11. Field Mixing and Transferring. (1) Field mixing, transferring, or rinsing of pesticides or fertilizers shall be performed at the field site, or at a temporary or permanent operational containment site.

(2) No mixing and transferring of pesticides and fertilizer or rinsing of equipment shall be conducted on public highways, roads, and streets.

Section 12. Distribution. (1) Bulk repackaging for sale or delivery may occur provided the establishment conducting the transfer, sale or delivery complies with 40 CFR.

(2) Sale by weight or meter shall be approved method of resale for pesticides and fertilizer. Both methods shall meet the specifications, tolerances and other technical requirements for weighing and measuring devices as approved by or exempted by the Weights and Measures Division of the Kentucky Department of Agriculture.

(3) If meters are used, a limit of one (1) product per meter shall be used when distributed for sale.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: November 17, 1995

FILED WITH LRC: November 17, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 22, 1996 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 17, 1996, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton

(1) Type and number of entities affected: All agrichemical storage commercial facilities engaged in the storage and handling of pesticides and fertilizers.

(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

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competition) for the:

1. First year following implementation: There is a compliance schedule set forth in Section C. All facilities have to come into compliance within 5 years.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be cost involved for the facilities who store in bulk fertilizer.

2. Continuing costs or savings: There will be additional cost for the 5 year period.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: Current personnel will be used to insure compliance.

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

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

(a) Geographical area in which administrative regulation will be implemented: It is difficult to determine the economic impact and who will be effected.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation has been discussed extensively for several years. This is the most reasonable regulation possible.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A spill of these bulk fertilizers or pesticides could potentially be a hazard to the environment and other health. This regulation will help to prevent a hazardous spill.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Same

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All commercial agricultural storage facilities engaged in the storage and handling of pesticides will be treated the same.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (New Administrative Regulation)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY AND FUNCTION: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures to provide protection for basic life safety in county jails which do not house Class D felons.

Section 1. Definitions. (1) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020, operated by and under the supervision of any county, regional jail authority, city or urban county government which does not house Class D felons as defined by KRS 532.100.

(2) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

Section 2. Staffing. Each jail shall provide twenty-four (24) hour awake supervision for all inmates.

Section 3. Physical Plant. (1) All furnishings in the jail shall be noncombustible/nontoxic as approved by the Department of Corrections.

(2) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the State Food Service Code, 902 KAR 45:005.

(b) Commercial type stoves and refrigeration units.

(c) Walls, floors, and ceiling shall be approved fire rated masonry, concrete or steel construction.

(3) Gauges, indicators, and alarms shall be located in an area that staff can monitor.

(4) The jail shall provide ventilation to meet air exchange as required in the state health codes.

(5) Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers.

(6) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which shall be secure.

(7) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(8) A set of duplicate keys shall be maintained in a separate, secure place.

Section 4. Fire Safety. (1) Each jail shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of inmates, visitors, and staff. These shall include but not be limited to:

(a) Provision for fire emergency planning sessions for staff at least quarterly.

(b) Written documentation of fire planning sessions.

(c) A fire safety inspection by the Department of Corrections at least once a year.

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.

(e) Smoking restrictions and regulations.

(f) Written evacuation plan coordinated with local fire officials.

(2) Each jail shall comply with the NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference.

(3) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(4) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(5) In all areas where an inmate may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and be operated by emergency power.

(6) Each jail shall have an approved fire alarm and smoke detection system.

Section 5. Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh and purified air circulating within inmate living and activity areas.

(4) All inmates shall be provided with hot and cold running water in showers and lavatories.

Section 6. Medical Services. (1) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to

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that defined by the American Red Cross.

(2) The jail shall have first aid kits available at all times.

(3) A health status (including current medications, known allergies, diet or other special medical needs) shall be completed on each inmate during admission.

(4) Each inmate shall be afforded access to necessary medical care.

Section 7. Food Services. (1) The jail shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) Inmates shall receive three (3) meals per day. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(3) The jailer shall provide for medical diets where prescribed by a medical authority.

(4) The jail shall have sufficient cold and dry food storage facilities.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 24, 1996 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds budgeted for this 1994-96 biennium.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:010. Definitions.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY AND FUNCTION: This administrative regulation adopts the definitions to be used in all of the administrative regulations set forth in 600 KAR Chapter 6.

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" means as defined in KRS 45A.030(2).

(4) "Competitive negotiation" means as described in KRS 45A.085.

(5) "Consultant" means a firm which has been selected to perform engineering or related services for the cabinet as the prime firm in accordance with 600 KAR 6:060.

(6) "Contract" means as defined in KRS 45A.030(5).

(7) "Contract modification" means as defined in KRS 45A.030(6).

(8) "Cost per unit of work" means a price based on units when the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(9) "Cost plus a fixed fee" means a price based on the actual allowable cost of the work plus any preestablished fixed amount for operating margin.

(10) "DBE" means a disadvantaged business enterprise as defined and certified in accordance with the provisions of 600 KAR 4:010.

(11) "Direct salary" means the salary of persons directly involved with and chargeable to a specific project, e.g., engineering or draftsman time spent on a project.

(12) "Firm" means an individual or other entity which offers professional engineering or related services.

(13) "Lump sum" means a fixed price, including cost and operating margin, agreed upon between a consultant and cabinet for a group of tasks without a breakdown of individual values, i.e., a lot price.

(14) "Modification" means a formal revision to the terms of a contract.

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(15) "Noncompetitive negotiation" means as described in KRS 45A.095.

(16) "Overhead costs" means the indirect costs, including salaries and other costs, not chargeable to any specific project. These costs normally support the different projects in which a firm is involved, e.g., accounting, general maintenance and repair, building rent, utilities, furniture, etc.

(17) "Principal" means any individual who owns directly or indirectly more than ten (10) percent of the voting interest in a consulting firm or who is an officer of the firm (i.e., president, treasurer, vice president, secretary, or director).

(18) "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others.

(19) "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability, reputation, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.

(20) "Prequalification category" means a type of project for which professional engineering or related services are contracted.

(21) "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(22) "Professional engineering or related services" means specialized engineering or related professional services performed by individuals, consultants, or other organizations of recognized technical competence, education or experience that are involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.

(23) "Professional services" means specialized services performed by individuals or consultants of recognized technical competence.

(24) "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(25) "Project supervisor" means the director of the user division or person designated by the user division director to oversee the performance of a consultant to perform contracted services on a project.

(26) "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(27) "Salary additives" means employer-paid fringe benefits including an employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state and other similar benefits.

(28) "Scope of work" means all services and actions required of the consultant by the contract.

(29) "Services" means as defined in KRS 45A.030(19).

(30) "Six (6) year plan" means the document prepared by the Transportation Cabinet in accordance with the provisions of KRS 176.419 through 176.470.

(31) "Subconsultant" means a second consultant contracted to a prime consultant for the performance of work contracted by the cabinet to the prime consultant.

(32) "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the consultant's claims.

(33) "User division" means as defined in KRS 45A.800(6).

(34) "Work unit" means an item on a list of tasks which are required to be accomplished by the consultant in order to satisfactorily complete the scope of work.

tive regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. 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

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: This administrative regulation only contains the definitions which are applicable to this entire chapter of administrative regulations, 600 KAR 6:010 - 080. For the set of administrative regulations which, with very few changes, replace existing administrative regulation 600 KAR 1:101, there is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. With 250 firms prequalified each year the cost of prequalification to the industry is approximately \$75,000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about \$600,000 to prepare the proposals.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A.

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

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: November 28, 1995

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PUBLIC HEARING: A public comment hearing on this administra-

orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract. The amendments to the administrative regulation require the selection committee members to complete more forms certifying that the process required by KRS Chapter 45A have been carried out.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assure of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(4) Assessment of anticipated effect on state and local revenues:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically placing long and complicated advertisements in a newspaper for each project proposal requested, the Transportation Cabinet has elected to issue a procurement bulletin approximately four times each year. This bulletin will provide all of the information that would appear in an advertisement plus other information that is beneficial to firms when preparing proposals. The cabinet will mail these bulletins to every prequalified firm as well as placing newspaper advertisements regarding the availability of the bulletin. This procedure was adopted at the request of the professional engineering community in Kentucky. This procedure will save approximately \$80,000 per year. The alternative of allowing a firm which has a contract with the Transportation Cabinet to charge all travel costs even when the firm received the job based on the strength of the qualification of their personnel in or near a Kentucky office was rejected. Too often a firm receives a contract and repeatedly transports expensive, out-of-state personnel to Kentucky to perform the work. Therefore, the limit on travel expenses was included in the administrative regulation. The alternative of increasing salary costs for firm principals was allowed because the caps had not been increased in over a decade. The alternative of releasing to the public preliminary evaluations by the selection committee members was rejected because it is not required by law, the results are very preliminary, the selection committee members and the firms being evaluated all prefer that the initial information be kept confidential so that it not be used against anyone in a future selection process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: 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 governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The majority of this

regulatory impact analysis relates to all of the administrative regulations to which the definitions in 600 KAR 6:010 refer.

(11) Tiering: Was tiering applied? No. Explain: There is no way to tier definitions. However, when considering the entire chapter of administrative regulations as a whole, there are different requirements for the prequalification categories. In addition subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:020. Transportation Cabinet employee ethics and responsibilities in the implementation of KRS 45A.800 to 45A.835.

RELATES TO: KRS Chapter 11, KRS 45A.800 through 45A.835
STATUTORY AUTHORITY: KRS Chapter 11, KRS 45A.800 through 45A.835

NECESSITY AND FUNCTION: This administrative regulation sets forth the ethic responsibility to be followed by the Transportation Cabinet employees when establishing the need for, negotiation of, or contracting for professional engineering or related services or implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Transportation Cabinet Employee Ethics and Responsibilities. All cabinet personnel engaged in the procurement of engineering or related services or the implementation of the provisions of KRS 45A.800 to 45A.835 shall comply with the following:

(1) Consider the interests of the Commonwealth of Kentucky and the cabinet first when contracting for professional services;

(2) Request and accept assistance from other cabinet and state personnel as required without allowing it to impair the dignity and responsibility of the employee's position;

(3) Seek to obtain the maximum value for each dollar spent for professional services;

(4) Strive for honesty and truth in contracting;

(5) Denounce all forms of bribery or favors;

(6) Invite all firms to submit their qualifications for consideration by the cabinet;

(7) Assist other cabinet personnel in the contracting for professional services as necessary; and

(8) Comply with both the letter and the spirit of KRS Chapter 11A, KRS 45A.340, and to the Cabinet's Official Order Number 94902 regarding conflict of interest. This official order is incorporated by reference in 600 KAR 6:060.

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 28, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING A public comment hearing on this administrative regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the

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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 January 29, 1996. 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

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts. Approximately 50 persons serve on the selection committees each year. An additional 50 persons evaluate the qualifications of the firms. This administrative regulation is particularly applicable to those persons.

(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: 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: State Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only recognized alternative was the one of not promulgating this administrative regulation. Since this administrative regulation combined with the remainder of 600 KAR Chapter 6 is replacing existing administrative regulation 600 KAR 1:101 which contains the information in this proposed administrative regulation, the decision was made to continue the language in administrative regulation. This is because of the strong emphasis placed on ethics and impartiality in the enactment of KRS 45A.800 et. seq.

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Explain: The ethical responsibilities of the persons involved in the selection and prequalification of consulting firms cannot be tiered. All must be held to this high standard.

TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:030. Federal requirements.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

NECESSITY AND FUNCTION: This administrative regulation sets forth the federal requirements to be followed by the Transportation Cabinet when contracting for professional engineering or related services.

Section 1. Federal Regulatory Requirements. (1) If a highway project is funded in part by federal-aid funds, the cabinet shall be regulated by Title 23 of the United States Code and by the Code of Federal Regulations 23 CFR 172 and 49 CFR 18 in regard to the selection of a consultant.

(2) The cabinet shall submit justification and receive approval from the FHWA before using the noncompetitive negotiated method of contracting when federal-aid highway funds are used in the contract. A contract in which federal-aid highway funds may be awarded by noncompetitive negotiation shall be limited to the following:

(a) The service is available only from a single source;

(b) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(c) After solicitation of a number of sources, competition is determined to be inadequate.

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 28, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING A public comment hearing on this administrative regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. 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

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Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: On federal-aid highway projects, in addition to the requirements of KRS 45A.800 et seq, the Transportation Cabinet is required to comply with 23 USC and corresponding code of federal regulations. In most instances there will be no effect on the consulting firms. However, this administrative regulation is promulgated to provide the public notice of the federal requirements which govern some projects.

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

1. First year following implementation:

2. Second and subsequent years:

(2) Effects on the promulgating administrative body: The Transportation Cabinet is required to comply with the governing federal requirements on federal-aid highway projects. Because the Federal Highway Administration must review all phases of the federal projects for compliance, this adds a time delay and additional paperwork to the federal-aid projects which does not exist in the projects fully funded with state funds. However, without the federal review, there would be no federal aid available.

(a) Direct and indirect costs or savings: Administrative cost of dealing with the Federal Highway Administration. It is a very small part of the overall project cost.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements:

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: When dividing 600 KAR 1:101 into separate regulations, each with its own subject as required by KRS Chapter 13A, the decision was made to set the federal requirements applicable only to a federal-aid project into a separate administrative regulation so that it could easily be provided to those persons needing the information and not burdening others.

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? Yes. Explain: This administrative regulation is a tiering of the differences between federal-aid projects and those with no federal aid.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code, 23 CFR 172, and 49 CFR 18.

2. State compliance standards. The state has mandated that both the Transportation Cabinet and its contractors comply with the federal requirements when federal highway funds are used in funding the project.

3. Minimum or uniform standards contained in the federal mandate. The federal mandates specify the contracting procedures to be followed when federal funds are used.

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.

TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:040. Prequalification of firms for professional engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

NECESSITY AND FUNCTION: This administrative regulation sets forth the procedure and standards for the prequalification of firms for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Application for Prequalification for Professional Engineering or Related Services. (1) A firm desiring consideration for prequalification shall complete each qualification questionnaire pertaining to the categories for which prequalification is desired. These forms include the following which are incorporated by reference as a part of this administrative regulation:

(a) Consulting Engineer and Related Services Prequalification Application, TC 40-1, effective July 1994;

(b) Prequalification Requirements for Geotechnical Drilling Services, TC 64-540, effective May 1992;

(c) Prequalification Requirements for Geotechnical Engineering Services, TC 64-541, effective May 1992; and

(d) Prequalification Requirements for Geotechnical Laboratory Services, TC 64-542, effective May 1992.

(2) The completed prequalification form shall be submitted to the Division of Professional Services, 6th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

Section 2. Evaluation of Applications for Prequalification. (1) Each firm's qualifications for a requested prequalification category shall be reviewed by the offices or divisions within the cabinet with expertise in that requested prequalification category.

(2) The criteria for prequalification to be used by the user

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divisions and offices are listed in the Appendix to the Consulting Engineer and Related Services Prequalification Application as adopted July 1994 which is incorporated by reference as a part of this administrative regulation.

(3) The head of the user division or office shall notify the Division of Professional Services of its evaluation results.

(4)(a) The Division of Professional Services shall notify each firm of all evaluation results involving that firm.

(b) If a firm is disapproved for any requested prequalification category or service, the firm shall also be notified of the appeals procedure set forth in Section 6 of this administrative regulation.

Section 3. Annual Requalification. (1) A prequalified firm shall annually submit qualification and performance data on or prior to its anniversary dates of prequalification.

(2) The annual application shall include eleven (11) completed sets of the appropriate qualification forms and eleven (11) copies of the firm's current marketing brochure unless different instructions are communicated to the firm either verbally or in writing.

(3) Failure to submit the completed forms in a timely manner shall cause the removal of the firm's prequalification status.

(4) The annual renewal application shall be evaluated in accordance with the provisions of Section 2 of this administrative regulation.

Section 4. Changes in Firm. (1) A prequalified firm shall notify the Division of Professional Services of any major changes either increasing or decreasing the firm's professional or financial qualifications, capabilities, personnel, address, name change, or other of the major qualification criteria.

(2) The user division or office shall review the updated information received from the firm and shall reclassify the firm as appropriate with respect to types of work and capacity of the firm.

(3)(a) If a prequalified firm fails to notify the Division of Professional Services of a change of the address, it may be removed from the list of prequalified firms until it notifies the division of its new address.

(b) If the change of address notification is submitted to the Division of Professional Services during what would have been the firm's prequalification year and no other changes have occurred in the firm, the firm shall be restored to the list of prequalified firms.

(c) Removal from the list of prequalified firms pursuant to this subsection, shall not be a basis for appeal under the provisions of Section 6 of this administrative regulation.

Section 5. Removal from List of Prequalified Firms. (1) A firm may be removed from the list of prequalified firms by the Consultant Prequalification Committee for any of the following reasons:

(a) Failure to submit an annual application on the firm's anniversary date;

(b) Falsification of the firm's prequalification application as to its qualifications;

(c) Falsification of the firm's response to announcement of any project;

(d) Violation of the Executive Branch Ethics Law contained in KRS Chapter 11A;

(e) Falsification of the information provided to the Transportation Cabinet for audit purposes;

(f) Failure to have a current license from the Kentucky Professional Board of Registration;

(g) Failure to notify the Transportation Cabinet of the loss of personnel which has an impact on the firm's prequalification or project management within thirty (30) days; or

(h) Violation of the firm's certification that the firm's owner, principals or partners, or any family member having an interest of ten (10) percent or more in any business entity involved in the performance of the contract have not contributed more than the amount

specified in KRS 121.056(2) to the gubernatorial campaign of the current governor.

(2) The Chairman of the Prequalification Committee shall notify the firm in writing of its proposed removal from the list of prequalified firm and the reason for the proposed removal.

Section 6. Appeal Procedure for Firms Not Prequalified or Removed from Prequalified List. (1) The cabinet shall establish a permanent Consultant Prequalification Committee to evaluate the statements of qualifications of firms which appeal a disapproval rating or removal from the list of prequalified firms.

(2) The members of the Consultant Prequalification Committee shall be the following:

(a) Director, Division of Professional Services, Chairperson;

(b) Director, Division of Aeronautics;

(c) Director, Division of Traffic;

(d) Director, Division of Highway Design;

(e) Director, Division of Bridge Design;

(f) Director, Division of Materials;

(g) Director, Division of Transportation Planning;

(h) Director, Division of Environmental Analysis;

(i) Director, Division of Operations;

(j) Director, Division of Construction; and

(k) Director, Division of Multimodal Programs.

(3) A firm may appeal any disapproval relating to its request for approval of a prequalification category pursuant to Section 2 of this administrative regulation.

(4) A firm may appeal its removal from the list of prequalified firms pursuant to Section 5 of this administrative regulation.

(5) An appeal pursuant to this section of this administrative regulation shall be made in writing to the Chairman of the Consultant Prequalification Committee within thirty (30) days of notification of the action of the Transportation Cabinet.

(6) The basis of the appeal and the relief sought shall be stated in the written communication to the chairman.

(7)(a) Within sixty (60) days from receipt of an appeal, the committee members or their designees shall review the appeal and shall make a decision regarding the appeal.

(b) If the firm agrees, the committee may delay its decision for an additional sixty (60) days while the committee meets with the firm to discuss the appeal.

(8) The committee shall notify the State Highway Engineer and the firm of its decision.

(9) If the firm's appeal is denied by the committee, the firm may appeal the decision within thirty (30) days of written notice:

(a) Relating to nonqualification to the State Highway Engineer; or

(b) Relating to removal from the list of prequalified firms to the Secretary of the Transportation Cabinet.

(10) The State Highway Engineer or Transportation Cabinet Secretary, as appropriate, shall notify the firm of his decision within thirty (30) days. The decision of the State Highway Engineer or Transportation Cabinet Secretary shall be final.

Section 7. Conditional Prequalification. (1) The user division or office or Consultant Prequalification Committee may grant conditional prequalification to a firm if the firm:

(a) Has no direct highway or transportation experience but has identified personnel who have technical training or education and other types of experience which may allow the firm to perform the required services; or

(b) Performed poorly on past projects for the cabinet or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems.

(2) After the firm has performed services for the cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the committee in accordance with Section 1 of this administrative regulation.

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(3) Denial of conditional prequalification of a firm to perform services for the cabinet shall not be appealed.

Section 8. Material Incorporated by Reference. All material incorporated by reference as a part of this administrative regulation may be obtained, viewed, or copied at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4555. The office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 28, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING A public comment hearing on this administrative regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. 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

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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:

There is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification. The user divisions are required to involve significant amounts of man-hours in the reviews and evaluations.

(a) Direct and indirect costs or savings: At least \$100,000 is

incurred collectively by the user divisions each year.

1. First year: Same as above.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The consultant prequalification process has been fine-tuned over many years. There have been no recent problems reported or identified. Therefore, the same prequalification process in 600 KAR 1:101 which is being repealed was retained in this administrative regulation.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? Yes. Explain: There are different requirements for the prequalification categories. These requirements are dependent upon the type of work the consultant wishes to perform for the Transportation Cabinet.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code, and 23 CFR 172.7. The cited federal regulation requires that a state using federal aid on projects utilize qualifications-based procedures in the award of engineering and design-related services contracts.

2. State compliance standards. This administrative regulation sets forth the qualification procedures which all engineering and related services contractors must follow and comply with.

3. Minimum or uniform standards contained in the federal mandate. The mandate requires just that the state have a qualifications-based procedure and that it be approved by the US Department of Transportation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The prequalification procedures are applicable not only to federal-aid projects but also those state funded projects since any prequalified consultant will be able to submit a proposal on a federally-funded project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A prequalified firm may be selected for a federally-funded project at any time.

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Therefore, even if it has only previously been selected for state-funded projects, it has to be prequalified in accordance with the federal mandate.

TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

NECESSITY AND FUNCTION: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when issuing public notice of the need for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Preparation of a Procurement Bulletin. (1) When the Transportation Cabinet has need of engineering or related services, it shall prepare a procurement bulletin announcing its intentions.

(2) A procurement bulletin prepared by the cabinet shall include a request for proposal for each project anticipated being contracted during a specified period of time which includes the following:

(a) The general scope of the project as provided by the user division;

(b) A discussion of procedures to follow for submission of a proposal on the project;

(c) An anticipated project schedule as provided by the user division;

(d) Any requirements for DBE utilization;

(e) Deadline for filing responses;

(f) The evaluation factors and their relative weights on which the responses will be evaluated by the Selection Committee;

(g) A timetable for the selection committee's meetings for the project;

(h) A list of all firms prequalified pursuant to 600 KAR 6:040 in each applicable category as of the date of the bulletin;

(i) A list of the firms prequalified pursuant to 600 KAR 6:040 and certified as a DBE as of the date of the bulletin;

(j) In certain circumstances deemed appropriate by the State Highway Engineer, the maximum fee for consultant services for the project;

(k) When appropriate, the item numbers from the "six (6) year plan"; and

(l) The items required by KRS 45A.825(2)(b).

(3) A copy of the procurement bulletin shall be mailed to each firm prequalified in any category to perform engineering or related services for the cabinet.

(4) If deemed appropriate by the State Highway Engineer, the procurement bulletin may indicate the maximum fee for a particular proposed project or require the initial solicitation of a complete work price and qualification proposal.

(5) A procurement bulletin for statewide engineering or related services may specify that more than one (1) firm be selected to provide the services requested in the bulletin.

(6)(a) The user division or office shall recommend the evaluation factors and relative weights to the Transportation Cabinet Secretary. Unless unique or particularly complex circumstances exist, the evaluation factors shall be selected from the list set forth below. The Transportation Cabinet Secretary shall approve the evaluation factors and relative weighting placed on each of the factors that appear in a procurement bulletin for selection of professional firms for engineering

or related services.

1. Relative experience of professional personnel assigned to the project team:

a. With highway projects or projects on another mode of transportation or intermodal transportation projects for the Kentucky Transportation Cabinet; and

b. With highway projects or projects on another mode of transportation or intermodal transportation projects for federal, local or other state governmental agencies;

2. Capacity to comply with the project schedule;

3. Past record of performance on a project of similar type and complexity;

4. Project approach and proposed procedures to accomplish the services for the project;

5. Location where the work will be performed;

6. Special or unique expertise;

7. Special or unique equipment; and

8. Familiarity with geographic areas and resources.

(b) The weighting of each factor shall be published in the announcement for the specific project.

(7) Each time a procurement bulletin is published, the cabinet shall place an advertisement of the cabinet's need for engineering or related services and availability of the procurement bulletin in at least two (2) newspapers of general, multicounty circulation and one (1) newspaper which has minorities as its targeted readership.

Section 2. Response to Procurement Bulletin. (1) A prequalified firm responding to a procurement bulletin for engineering or related services shall submit to the Division of Professional Services the following:

(a) The specified number of copies of a completed Response to Announcement for Engineering or Related Services as Prime Consultant, form TC 40-15 revised July 1994. Form TC 40-15 is incorporated by reference as a part of this administrative regulation; and

(b) The letter required by KRS 45A.825(3).

(2) A prequalified firm responding to a procurement bulletin for construction-related engineering services shall submit to the Division of Professional Services, in addition to the items in subsection(4)(a) of this section, the Supplemental Information in Response to Announcement for Construction Services, form TC 40-7 revised June 1992. Form TC 40-7 is incorporated by reference as a part of this administrative regulation.

(3) A prequalified firm which proposes to employ a subconsultant when responding to a procurement bulletin shall submit to the Division of Professional Services, in addition to the other items required by this section, the Subconsultant Qualifications for Response to Advertisement for Engineering and Related Services, form TC 40-15-SUB revised July 1994. Form TC 40-15-SUB is incorporated by reference as a part of this administrative regulation.

(4) A firm or proposed subconsultant shall be prequalified in the specified areas of prequalification prior to the response due date published in the announcement of the need for engineering or related services for a particular project or shall not be considered for selection.

(5)(a) The Director, Division of Professional Services, shall certify the list of firms that responded to the procurement bulletin in a timely manner to the appropriate Professional Engineering Services Selection Committee.

(b) Responses received after the deadline shall be returned to the firm and shall not be listed for consideration to perform the project.

(c) Responses received with fewer copies of the response than required shall be returned to the firm and shall not be listed for consideration to perform the project.

(d) The list of responses to the procurement bulletin shall be confidential until the contract is negotiated and executed and the selected consultant receives a notice of approval for payment from

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the Division of Professional Services as set forth in 600 KAR 6:070.

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 28, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING A public comment hearing on this administrative regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. 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

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: A complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal.

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

1. First year following implementation: The administrative regulation sets for the requirements for submitting a proposal to the Transportation Cabinet.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year. However, these values are the total cost of the requirements set forth in 600 KAR Chapter 6.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of all proposals submitted on projects.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically placing long and complicated advertisements in a newspaper for each project proposal requested, the Transportation Cabinet has elected to issue a procurement bulletin approximately four times each year. This bulletin will provide all of the information that would appear in an advertisement plus other information that is beneficial to firms when preparing proposals. The cabinet will mail these bulletins to every prequalified firm as well as placing newspaper advertisements regarding the availability of the bulletin. This procedure was adopted at the request of the professional engineering community in Kentucky. This procedure will save approximately \$80,000 per year.

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Explain: The bulletin/advertising document is the same for all types of projects.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.5.

2. State compliance standards. The state has promulgated this administrative regulation setting forth the method of procurement it is utilizing for soliciting proposals for prospective consultants.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the solicitation of proposals from prospective consultants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for soliciting proposals is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS Chapter 45A imposes virtually the same requirements on state-funded projects as 23 CFR 172.5 does on federally-funded projects.

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TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:060. Professional engineering service selection committee.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

NECESSITY AND FUNCTION: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Establishing a Professional Engineering Services Selection Committee. (1) A Professional Engineering Services Selection Committee shall be selected as set forth in KRS 45A.810(5) and (6).

(2)(a) The Transportation Cabinet Secretary shall annually request voluntary applications from the professional engineering staff in the cabinet for availability to serve in the pool of six (6) professional engineers required by KRS 45A.810(5)(a).

(b) The Transportation Cabinet Secretary, or his designee, shall review all applications and submit a list of ten (10) applications from which the secretary shall select six (6) to serve in the pool for a period of one (1) year.

(c) Only persons who are employees of the cabinet and registered professional engineers of the Commonwealth shall be appointed to the pool.

(d) A person serving on the Professional Engineering Services Selection Committee from this pool shall not be eligible to also serve on the same selection committee as a representative of a user division as specified KRS 45A.810(5)(b).

(3)(a) The director of the user division responsible for monitoring the professional services shall appoint two (2) professional engineers from either the user division or the same functional area from the highway district offices where the project is located.

(b) If the user division does not have two (2) professional engineering merit employees or if the services in the announcement are for nonengineering but related services, the director shall appoint two (2) employees who have familiarity and experience related to the services that are being contracted.

(c) The director may appoint himself to the committee.

(d) If there are two (2) user divisions with approximately equal or separate responsibilities for the project, upon approval of the Director of the Division of Professional Services, each co-user division shall appoint one (1) member to the selection committee.

(e) If the cabinet is procuring professional engineering or related services in conjunction with another agency or governmental entity or state, that unit outside the cabinet may be designated as a co-user division and be eligible to appoint one (1) member of the selection committee.

(4) An employee of the cabinet shall not be required to involuntarily serve as a member of a Professional Engineering Services Selection Committee.

(5) Each member of a Professional Engineering Services Selection Committee shall execute the following forms which are incorporated by reference as a part of this administrative regulation:

(a) Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee, form TC 40-9 effective May 1994;

(b) "Ex Parte Disclosure Form," Form TC 40-6 as effective May 1994;

(c) "Certificate of Confidentiality Form," Form TC 40-4 as effective May 1994; and

(d) "Certificate of Conformity with Procurement Process," Form

TC 40-10 as effective May 1994.

(6)(a) If the individual, randomly selected to serve on a selection committee in accordance with KRS 45A.810(5)(c), is an employee of a consulting firm, that consulting firm shall not be considered for any projects which are reviewed by that selection committee.

(b) If a firm submitted a response under this circumstance, the firm's response for that project shall be returned by the selection committee with a letter of explanation.

(7) After issuing written approval to advertise for a consultant to perform professional engineering or related services, the secretary of the cabinet, or his designee, shall establish a Professional Engineering Services Selection Committee for each project.

(8) The Division of Professional Services shall provide each Professional Engineering Services Selection Committee with the necessary administrative and technical support and office supplies.

(9)(a) Each member of a Professional Engineering Services Selection Committee shall comply with the Executive Branch Code of Ethics established in KRS Chapter 11A.

(b) Each member of a selection committee shall scrupulously comply with both the letter and the spirit of the cabinet's Official Order Number 94902 regarding Conflict of Interest which was issued on May 21, 1993. This Official Order is incorporated by reference as a part of this administrative regulation.

(c) Each Transportation Cabinet member of a Selection Committee shall file an annual statement of financial disclosure pursuant to KRS 11A.050.

Section 2. Operation of a Professional Engineering Services Selection Committee. (1)(a) The initial meeting of a Professional Engineering Services Selection Committee shall be called by the Division of Professional Services.

(b) A quorum for the initial meeting shall be three (3) of the five (5) voting members.

(2)(a) Meetings of a Professional Engineering Services Selection Committee may be called by the chairperson at a mutually convenient time during normal working hours with at least one (1) week's notice.

(b) Special meetings may also be called upon a consensus of four (4) of the five (5) voting members of the selection committee.

(c) A motion or decision of the selection committee shall require a simple affirmative vote of all members present for passage.

(d) A quorum for all but the initial meeting shall be constituted by four (4) of the five (5) voting members present.

(e) Voting by proxy shall not be allowed.

(3)(a) The Professional Engineering Services Selection Committee shall give fair and impartial consideration to all responses certified in accordance with KRS 45A.825(6).

(b) The selection committee shall utilize the evaluation factors and weights indicated in the announcement for each project to screen all certified firm responses.

(c) Prior to the second meeting of the selection committee to determine and rank the three (3) most qualified firms, each voting selection committee member shall review all certified responses and preliminarily evaluate and numerically rate each firm using the weighted evaluation factors that appeared in the procurement bulletin. These evaluations and ratings are preliminary and therefore confidential working documents.

(4) In an executive session at its second meeting, the selection committee shall determine the three (3) best qualified firms and develop a ranking of the three (3) by considering the weighted evaluation factors that appeared in the procurement bulletin.

(5)(a) Each committee member shall list all firms in his top three (3) rankings.

(b) All firms included on any of these lists shall be placed on the short list of firms.

(6)(a) All firms included on the short list shall be individually discussed by the committee with regard to their qualifications, the quality of their proposals, and the evaluation factors.

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(b) Each committee member shall be given the opportunity to provide insight into why each firm should or should not be selected for the project.

(c) Any firm may be eliminated from further consideration by consensus of the selection committee members.

(7)(a) Each firm remaining under consideration after the discussion period set forth in subsection (6) of this section shall be individually ranked by the committee members using secret ballots.

(b) A new listing of short-listed firms based on the composite rankings of the secret ballots shall be discussed by the selection committee.

(c) Any firm may be eliminated from further consideration by consensus of the selection committee members.

(8) If at the end of the process set forth in subsection (7) of this section, more than three (3) firms remain under consideration, the process set forth in subsection (7) of this section shall be repeated until only three (3) firms remain for consideration by the selection committee.

(9) Each of the three (3) firms identified in subsection (8) of this section shall be individually ranked by the committee members using secret ballots.

(10)(a) Unless there is a tie between two (2) of the firms, the results of subsection (9) of this section shall determine the ranked order of the three (3) best qualified firms.

(b) If there is a tie ranking and if one of the firms has indicated that more of its work tasks will be performed in Kentucky, that firm shall be ranked higher than the other with which it had tied.

(c) If there is a tie ranking and if the work tasks to be performed in Kentucky are equal, the selection committee shall again perform the functions set forth in subsection (7) of this section until the tie is broken.

(11) If the selection committee elects, it may interview any of the responding firms to aid in its determination of the best qualified firm.

(12) For selection committee reviews involving statewide services advertised in accordance with Section 1(4) of 600 KAR 6:050, the committee shall rank the number of top-ranked firms as specified in the procurement bulletin and may select a second and third ranked firm, but a minimum of three (3) firms shall be ranked.

(13) The evaluations and ratings of the individual selection committee members shall be considered preliminary and confidential working documents and shall not be available to the public.

(14)(a) The Chairman of the Professional Engineering Services Selection Committee shall notify the Director of the Division of Professional Services of the firms determined by the committee to be the three (3) best qualified and the order of their ranking.

(b) The Division of Professional Services shall send the letters required in KRS 45A.825(7)(c).

(c) The Division of Professional Services shall immediately notify by letter the top-ranked firm of its selection for the advertised project.

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 28, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING A public comment hearing on this administrative regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 require-

ments by January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. 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

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts. Approximately 50 Transportation Cabinet employees are required to follow the procedures set forth in this administrative regulation for the selection of consulting firms.

(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:

There is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. This administrative regulation actually has no direct or indirect costs or savings to anyone since it just sets forth the additional procedures for the operation of the Consultant Selection Committee which were not set forth in KRS 45A.800 et seq.

(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: The basic process relating to the Consultant Selection Committee is set forth in KRS 45A.800 et seq. This administrative regulation just "fleshes" out the process and therefore has no real effect on the Transportation Cabinet.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year. However, this cost relates to the entire process set forth in all of the administrative regulations in 600 KAR Chapter 6.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000 for the entire process set forth in 600 KAR Chapter 6.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: The evaluation of all proposals submitted on projects and the certifications that the process was carried out properly.

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

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

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authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of releasing to the public preliminary evaluations by the selection committee members was rejected because it is not required by law, the results are very preliminary, the selection committee members and the firms being evaluated all prefer that the initial information be kept confidential so that it not be used against anyone in a future selection process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: 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 governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Explain: KRS Chapter 45A establishes the same basic procedure for the operation of any Consultant Selection Committee.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.5.

2. State compliance standards. The state has promulgated this administrative regulation setting forth the method of evaluation of proposals and the ranking/selection of consultants.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the evaluation of proposals and the ranking/selection of consultants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for evaluating proposals and the ranking/selection of consultants is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS Chapter 45A imposes virtually the same requirements on state-funded projects as 23 CFR 172.5 does on federally-funded projects.

TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:070. Contracting for professional engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY AND FUNCTION: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while imple-

menting the provisions of KRS 45A.800 to 45A.835.

Section 1. Methods of Contracting with Consultants. (1) The following methods of contracting with consultants shall be acceptable:

(a) Lump sum;

(b) Cost plus a fixed fee;

(c) Specific rates of compensation; or

(d) Cost per unit of work.

(2)(a) When the cabinet chooses the lump sum method of contracting, the consultant shall present a statement to the Division of Professional Services showing the probable cost for the elements of work and the expected operating margin.

(b) This statement shall include a supported breakdown of the direct and indirect costs and subconsultant costs which the consultant expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can be easily reviewed.

(d) The Division of Professional Services and the user division shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the consultant;

2. The extent, scope, complexity, character and duration of the required services;

3. Professional and financial investments to be required of the consultant;

4. The consultant's normally-expected return for such services;

5. Conditions under which the consultant is expected to perform;

6. The cabinet's estimate of the appropriate amount for the services required; and

7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) When the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which cannot be exceeded without obtaining cabinet approval.

(b) During negotiations, the Division of Professional Services or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the consultant for the services required.

(c) The Division of Professional Services or other negotiation unit shall establish the fixed fee and an upper limit based on past experience gained from negotiations of similar projects, judgment regarding scheduling and complexity of work and the user division's estimates.

(4)(a) When the cabinet chooses the specific rate of compensation method of contracting, the Division of Professional Services or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit when the consultant establishes, and the user division agrees, that there has been or is to be a significant change in the:

1. Scope, complexity or character of the services to be performed;

2. Conditions under which the work is required to be performed; or

3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

(c) In the case of statewide agreements under which there is to be subsequent individual authorizations, the establishment of a maximum amount for the overall contract shall be submitted to the LRC's Personal Service Contract Review Subcommittee. A maximum amount shall be established for each of the individual authorizations which shall not exceed the maximum amount for the overall contract.

(5)(a) When the cabinet is using the cost per unit of work method of compensation, the consultant shall be paid on the basis of units completed.

(b) This method of contracting is appropriate when the extent of the work cannot be definitely defined but when cost of the work per unit may be determined in advance with reasonable accuracy.

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for consultants.

(6)(a) For an individual acting as a consultant, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 2. Prenegotiation Procedures. (1) A consultant selected pursuant to 600 KAR 6:060 shall meet with cabinet representatives in accordance with the schedule identified in the procurement bulletin issued pursuant to 600 KAR 6:050 to discuss in detail the scope of services to be provided by the consultant for the project.

(2) After this meeting, the consultant shall submit the following to the cabinet:

(a) For roadway design, work units which qualify the tasks to be performed to achieve the roadway design services that appeared in the advertisement or procurement bulletin and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:
 - a. Concur;
 - b. Modify and return the modification to the consultant; or
 - c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop labor rates to be applied to the work units to determine man-hours for each task.

(b) For structure work, work units include a description of the structure to be designed including but not limited to type, length, span arrangement, curves, skew, pilings based on preliminary geotechnical information, an identification of the assignment of the work units to the prime consultant or a subconsultant, and any other pertinent considerations.

1. The cabinet has the following options regarding the submittal:
 - a. Concur;
 - b. Modify and return the modification to the consultant; or
 - c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop labor rates to be applied to the work units to determine man-hours for each task.

(c) For environmental services, a scope of work for each task and corresponding man-hours to achieve each task and an identification of the assignment of the work units to the prime consultant or a subconsultant.

(d) For geotechnical assessments, a copy of the work units and corresponding cost derivatives to achieve each task which qualifies and quantifies the tasks to be performed to achieve the geotechnical services that appear in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:
 - a. Concur;
 - b. Modify and return the modification to the consultant; or
 - c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop labor rates to be

applied to the work units to determine man-hours for each task.

(e) For bridge maintenance inspection, a copy of work units and proposed equipment usage to achieve the inspection services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:
 - a. Concur;
 - b. Modify and return the modification to the consultant; or
 - c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop labor rates to be applied to the work units to determine man-hours for each task.

(f) For planning studies, work units which qualify the tasks to be performed to achieve the planning study services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:
 - a. Concur;
 - b. Modify and return the modification to the consultant; or
 - c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop labor rates to be applied to the work units to determine man-hours for each task.

(3) The consultant shall submit to the Division of Professional Services a fair and reasonable fee proposal which shall be prepared using the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subconsultants and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of subsections (5), (6), (7), and (8) of this section; and

(f) Person-hours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(4) After the Division of Professional Services requests a proposal and fee estimate from the consultant, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Professional Services in negotiation of the contract.

(5)(a) Except as set forth in subparagraph (b) of this subsection, for contract negotiation purposes, the maximum allowable overhead rate shall be 150 percent;

(b) For contract negotiation purposes, if a consultant or subconsultant offers special expertise in engineering or related services which is outside normal project development activities, the allowable overhead rate may exceed 150 percent if:

1. The director of the Division of Professional Services approves;
2. The State Highway Engineer approves;
3. The Secretary of the Transportation Cabinet approves; and
4. The approved overhead rate does not exceed the actual overhead rate established pursuant to 48 CFR Part 31.

(6) For contract negotiation purposes, travel expenses for consultant employees or survey crews shall be limited to those incurred from an office in Kentucky or the border of Kentucky nearest the consultant's office;

(7) For contract negotiation purposes, direct expenses shall be limited to the following items and limits:

- (a) Passenger car - twenty-five (25) cents per mile;

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(b) Truck or four (4) - wheel drive vehicle - thirty-five (35) cents per mile;

(c) Lodging:

1. Professional staff - fifty-five (55) dollars per night per person; and

2. Survey field personnel - seventy (70) dollars per night for two (2) persons in one (1) room;

(d) Meals:

1. Breakfast - five (5) dollars per day per person;

2. Lunch - six (6) dollars per day per person; or

3. Dinner - thirteen (13) dollars per day per person;

(e) Printing of reports for distribution external to the Transportation Cabinet - estimated cost from the printer per document;

(f) Travel time for a survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives;

(g) Special equipment which is project-specific;

(h) Capital cost of money; and

(i) Computer time, if accounted for as a direct charge, shall not exceed fifteen (15) dollars per hour.

(8) For contract negotiation purposes, the maximum direct salary for a nonprincipal or nonpartner of a firm shall be \$90,000 per year.

Section 3. Contract Negotiations. (1)(a) The Division of Professional Services shall be the designated negotiating agent for the Department of Highways in the Cabinet.

(b) If professional engineering or related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division shall be responsible for negotiating the fee.

(2)(a) The Division of Professional Services or other designated negotiation unit shall receive the proposal and fee estimate from the consultant. The proposal submitted by the consultant shall include either a statement that the payment shall be based on the percentage of work completed or the proposed project milestones and corresponding maximum percentage payments and a breakdown of the estimated fee for performing the work including the following:

1. Direct salaries;

2. Overhead;

3. Payroll additives;

4. Other direct costs including cost of materials which are not included in the overhead;

5. Subconsultant costs;

6. Operating margin; and

7. Use of DBE firms.

(b) The Division of Professional Services or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with KRS 45A.825(9).

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the consultant shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the External Audit Branch.

(4)(a) If a consultant intends to utilize the services of a subconsultant to perform any part of the work, at the time of negotiations the consultant shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subconsultant.

(c) A subconsultant shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Professional Services or

other negotiation unit shall be necessary.

(e) If a consultant desires to utilize a subconsultant to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section 6 of this administrative regulation shall be followed.

(5) A consultant which is awarded a contract for professional engineering or related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Professional Services.

(6)(a) The operating margin allowed a professional engineering or related services consultant shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. Lump sum contract:

a. Fifteen (15) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, less than \$2,000,000; or

b. Ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, equal to or in excess of \$3,000,000; or

c. For a contract with the total direct labor cost, plus overhead cost of \$2,000,000 to \$3,000,000, the operating margin shall be fourteen (14) percent to ten (10) percent with a one (1) percent reduction for each \$200,000 increase in fee.

2. Unit price contract - fifteen (15) percent of the estimated unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Professional Services or other negotiation unit shall compare the consultant's established fee with the cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Professional Services or other negotiation unit shall negotiate with the consultant to establish a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

(9)(a) The consultant shall keep written documentation of each negotiation meeting and shall submit to the Division of Professional Services or other negotiation unit the following:

1. Minutes of negotiations;

2. As-negotiated fee;

3. As-negotiated man-hours;

4. Classification percentage distribution; and

5. Direct cost breakdowns.

(b) The public shall not be denied access to the items set forth in paragraph (a) of this subsection.

(10) After the Division of Professional Services or other negotiation unit has negotiated a contract, the head of the unit shall send letters to the two (2) other finalists informing them of the consultant which successfully negotiated a contract and the procedure that shall be followed in awarding the contract.

Section 4. Contract Preparation and Execution. (1) The Division of Professional Services or other negotiation unit shall prepare an agreement or contract to cover the services to be provided, method and amount of payment, the time of completion and necessary special provisions.

(a) The agreement shall also include by reference the General Provisions Attachment as revised July 1994 unless the project is for a consultant structure inspection. The General Provisions Attachment is incorporated by reference as a part of this administrative regulation.

(b) If the project is for a consultant structure inspection, the agreement shall also include by reference the Division of Operations, Consultant Structure Inspection Provisions as revised in May 1993.

The Division of Operations, Consultant Structure Inspection Provisions Form is incorporated by reference as a part of this administrative regulation.

(2) The contract and negotiation minutes shall be sent to the consultant for the signature of an authorized representative. All original documents shall be returned to the Division of Professional Services or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) When the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Professional Services shall send to the FHWA the following requesting their approval:

- (a) A copy of the contract;
- (b) The negotiated fee and person-hours;
- (c) The consultant's fee and person-hour proposal;
- (d) The cabinet's person-hour estimate;
- (e) The minutes of the negotiation;
- (f) The minutes of the predesign conference;
- (g) A copy of the advertisement and announcement;
- (h) The list of firms that responded to the announcement in a timely manner;
- (i) The written approval from the secretary of the cabinet to engage a professional firm;
- (j) The minutes of the Professional Engineering Services Selection Committee;
- (k) The memorandum from the Chairman of the Selection Committee stating the ranking of the three best-qualified firms by the Professional Engineering Services Selection Committee; and
- (l) The audit report of overhead and wage rates which was used to establish the fee.

(6) If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate the project or ask for reconsideration by the FHWA.

Section 5. Notice to Proceed and Payments. (1)(a) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(b) The funds for statewide contracts shall be encumbered on a project by project basis.

(2) When the Division of Professional Services or other negotiation unit receives a copy of the transmittal sheet indicating that the LRC Personal Service Contract Review Subcommittee has received the contract and project information for review, a notice to proceed shall be sent to the consultant indicating that it may commence work but it shall not bill for services until specifically authorized to do so. For projects requiring approval of a unit of the federal government, notice to proceed shall not be issued until the federal approval is obtained.

(3) When the LRC Personal Service Contract Review Subcommittee issues a notification of acceptance on a contract, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Personal Service Contract Review Subcommittee objects to the contract and the cabinet determines that the contract is to be canceled, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and shall take necessary steps to close the contract.

(b) If the cabinet determines that the contract is to be modified to comply with the concerns of the LRC Personal Service Contract Review Subcommittee, the Division of Professional Services or other negotiation unit shall notify the consultant of the necessary modifications and shall follow the contract modification and change order procedures specified in Section 7 of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed

as submitted to the LRC Personal Service Contract Review Subcommittee, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

Section 6. Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet.

(1)(a) A project supervisor shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project supervisor.

(c) The project supervisor shall be responsible for coordinating all cabinet activities with the consultant and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the consultant's activities;
2. Reporting the status of these activities to the appropriate authority;
3. Periodically reviewing the work to determine if the work:
 - a. Is acceptable;
 - b. Is in accordance with the agreement for the particular project; and
 - c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation; and
4. Completing and processing the Consultant Monthly Report Form incorporated by reference in Section 9 of this administrative regulation.

(2)(a) During the project, the consultant may subcontract with other firms to perform specialized services in a manner similar to Section 1(4) of this administrative regulation. The subconsultant shall be prequalified by the cabinet in accordance with the provisions of 600 KAR 6:040 if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subconsultant are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent change orders, the consultant shall submit a request for a fee adjustment for the man-hours to be performed by the subconsultant.

(c) If the subconsultant services are not subject to prequalification procedures and exceed \$25,000, they shall be reviewed by the External Audit Branch for reasonableness of cost. For subcontracts equal to or less than \$25,000, the Director of the Division of Professional Services or other negotiation unit, upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section 7. Contract Modifications. (1) When it is determined by either the consultant or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

- (a) Change in termini or section;
- (b) Addition of major phases of work to the negotiated scope of work;
- (c) Modification of previously approved work resulting from factors beyond the control of the consultant;
- (d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a change order consideration are identified in the original contract;
- (e) Delay by the cabinet as outlined in each contract;
- (f) Use of a subconsultant for services previously identified to be done by the consultant or other subconsultant; or
- (g) Availability of current audit established in accordance with 600 KAR 6:080.

(2) The request for a contract modification may be originated by

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the Division of Professional Services, user division, highway district office or the consultant.

(3) When the director or office head of the user division determines the change is appropriate, the user division shall advise the consultant in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement.

(a) When additional or reduced compensation is justified, the user division shall request a revised proposal from the consultant.

(4) The contract modification shall be negotiated using the procedures set forth in Sections 1, 2, and 3 of this administrative regulation.

(5) The Division of Professional Services or other negotiation unit shall send the Change Order form TC 40-17 as revised June 1992 or the Construction Consultant Change Order form, TC 63-53 revised June 1992, to the consultant for its approval. These forms are incorporated by reference as a part of this administrative regulation.

(6) After approval by the cabinet, the change order, LRC's proof of necessity form and other supporting documentation shall be submitted to the LRC Personal Service Contract Review Subcommittee.

(7) For projects requiring FHWA oversight, the approved change order shall be sent to the Federal Highway Administration for approval in accordance with Section 4(4) of this administrative regulation.

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved change order.

Section 8. Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the consultant for future reference.

(2) The project supervisor or the director of the user division shall review the work performed by the consultant, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the consultant.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the consultant and prepare written documentation of the consultant's performance on the project.

(4) The user division shall send the consultant written documentation of the consultant's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Professional Services and in the consultant's experience record file.

(5)(a) The consultant may appeal in writing a below average rating to the user division director within thirty (30) days of written documentation of the consultant's performance for the project.

(b) The appeal shall specifically set forth the reasons why the consultant believes the below average rating is in error.

(c) The user division director shall notify the consultant within thirty (30) days from the consultant's appeal of the director's decision of whether or not to revise the performance rating.

(d) The consultant may appeal in writing the user division director's decision to the Chairman of the Consultant Prequalification Committee within thirty (30) days.

(e) The Consultant Prequalification Committee shall review all documentation relating to the consultant's performance for the project. The committee may discuss the performance rating with the project supervisor or the consultant.

(f) The committee shall notify the consultant and the user division of its decision within ninety (90) days from the consultant's appeal.

(g) If the consultant's appeal is denied by the Consultant Prequalification Committee, it may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial of its appeal by the Consultant Prequalification Committee.

(h) The State Highway Engineer shall notify the consultant of his decision within thirty (30) days.

(i) The decision of the State Highway Engineer shall be final.

(j) If the performance evaluation documentation is revised, the initial documentation shall be removed from all files and replaced with the revised performance document.

(6) The Director of the Division of Professional Services or head of other negotiation unit shall request the External Audit Branch to perform a final audit if appropriate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the consultant. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section 8. Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the consultant.

(2) When the cabinet decides to cancel a professional services contract, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall be liable only for payment of services up to the date of cancellation of the contract as specified by the terms of the contract.

Section 9. Payments to Consultants. Before payment of a partial or final request for payment, the cabinet shall review the work of the consultant, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be submitted by the consultant as agreed upon in the contract. The consultant shall submit an Engineer's Pay Estimate, TC 61-408 revised March 1988 and a Consultant Monthly Report, TC 61-2 revised October 1995 as an invoice to the chief district engineer or director of the user division or to their designees. These two (2) forms are incorporated by reference as a part of this administrative regulation.

(2) The chief district engineer or director of the user division or his designee shall review the Engineer's Pay Estimate and Consultant Monthly Report, verify that the work has been completed as described in the document, and sign both forms.

(3) If an Engineer's Pay Estimate is not needed to be submitted to the chief district engineer or director of the user division within a given month, the Consultant Monthly Report shall still be submitted.

(4) Final invoices and requests for payment shall be authorized only after all work has been reviewed and accepted or approved, including any final reports prepared by the consultant. All terms and conditions of the contract shall be satisfactorily met and the final audit shall be performed prior to processing the final payment.

Section 10. Material Incorporated by Reference. All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4555. Its office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 28, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING A public comment hearing on this administrative regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing

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Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. 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

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and includes the 60 or so which will ultimately negotiate contracts each year.

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

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

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: The staff of the Contract Negotiating Branch of Division of Professional Services is constantly involved in the contract negotiation process. There are approximately 60 original contracts negotiated each year. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year. However, this is the cost for the entire process set forth in 600 KAR Chapter 6, not just this administrative regulation.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000 for the processes set forth in 600 KAR Chapter 6.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Documentation of the entire negotiation process. Preparation of the contracts.

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

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

authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of allowing a firm which has a contract with the Transportation Cabinet to charge all travel costs even when the firm received the job based on the strength of the qualification of their personnel in or near a Kentucky office was rejected. Too often a firm receives a contract and repeatedly transports expensive, out-of-state personnel to Kentucky to perform the work. Therefore, the limit on travel expenses was included in the administrative regulation. The alternative of increasing salary costs for firm principals was allowed over what is currently in 600 KAR 1:101 because of the increase in the cost of living since this was last allowed.

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? Yes. Explain: There are varying levels of costs allowed for the principals, owners and workers in a consulting firm. There are varying levels of mileage allowed for different types of motor vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.5.

2. State compliance standards. The state has promulgated this administrative regulation setting forth the method of negotiating of the reimbursement to be paid to the selected consultant.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the method of negotiating of the reimbursement to be paid to the selected consultant.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for negotiating of the reimbursement to be paid to the selected consultant is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This is not a conflict with the federal regulation, just a way of simplifying all negotiations with the Transportation Cabinet.

TRANSPORTATION CABINET (New Administrative Regulation)

600 KAR 6:080. Financial records and audits of firms.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through

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45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY AND FUNCTION: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when auditing professional engineering or related services providers while implementing the provisions of KRS 45A.800 to 45A.835. It further sets the standards firms are to follow in the keeping of their financial records.

Section 1. Financial Records of Firms. (1) A firm which has been prequalified shall allow the cabinet access to all financial information necessary to determine the firm's direct wage rates, indirect cost rates, overhead, and direct project charges which are not included in overhead rates.

(2)(a) A prequalified firm shall maintain all financial records including payroll time records for all employees including the firm's principals in accordance with 48 CFR Part 31.

(b) A specific incurred cost or expense shall not be considered both a direct cost and indirect cost.

(3) When a firm is notified by the Transportation Cabinet of a pending on-site audit, the firm shall collect the following information to be given to the auditor when he arrives on-site. The auditor may request that a portion of the information which can be readily and easily reproduced be mailed to him prior to arriving on site.

(a) Chart of accounts;

(b) The latest fiscal or calendar year financial statement of the firm. If one is available which was compiled, reviewed, or audited by an independent CPA, it shall also be made available to the auditor;

(c) Income tax returns for the audit year;

(d) Statement of company policies to include but not be limited to personnel policies, personal leave time, vacation time, sick leave, overtime, pay raise, travel, subsistence reimbursement, bonuses, employment, or retirement plans;

(e) Copy of a current proposal for a project, if available;

(f) General ledger;

(g) Cash disbursements and accounts payable journals;

(h) Copies of all leases to include but not be limited to leases on office space, buildings, machinery, copiers, and motor vehicles;

(i) Schedule of current personnel by classification;

(j) Most current payroll register;

(k) Quarterly federal payroll tax forms;

(l) Billing statements;

(m) List of bonuses to individual employees and the date paid;

(n) Copy of the pension or retirement plan of the firm and the contributions made on behalf of each employee;

(o) List of officers and principals of the company which includes their salaries and other compensations paid during the audit year and the amount of time they work direct;

(p) All contracts which were active during the audit year; and

(q) Minutes from the directors or stockholders meetings.

(4) A direct cost shall be determined by the provisions of 48 CFR 31.202 and not by whether it is reimbursable.

Section 2. Limitations on Overhead, Direct Costs, and Indirect Costs. (1) The maximum direct salary for a principal or partner of a firm shall be \$100,000 per year.

(2) In the calculation of indirect costs for overhead, the maximum salary for administrative purposes shall be:

(a) \$100,000 a year for a principal or partner of a firm; or

(b) \$75,000 a year for a nonprincipal or nonpartner of a firm.

(3) The maximum direct salary for a nonprincipal or nonpartner of a firm shall be \$90,000 per year;

(4)(a) The lobbying portion of dues paid to organizations shall not be allowed in the computation of indirect costs.

(b) If an organization has not separated the lobbying portion of its dues in the billing statement, the organization shall be contacted by the auditor for the information.

(c) If the amount of the dues attributable to lobbying is not made

available to the auditor, the total amount of dues paid to the organization shall not be allowed in computation of indirect costs.

(5) To compute the average hourly pay rate for any salaried job classification at a firm, the number of available annual working hours per year shall be 2080.

(6) As a reasonableness test for indirect labor charges, indirect labor charges, including but not limited to bonuses and temporary help, shall not exceed sixty-seven (67) percent of the direct labor base of the firm.

Section 3. Approved Audits. (1) If the cabinet has not audited the firm in the previous twelve (12) months, the last available audit may be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(2)(a) If the firm has a current audit of sufficient detail prepared by a Defense Contract Audit Agency, an independent certified public accountant, or other audit accepted by a federal, state, or local governmental agency and desires the Transportation Cabinet to utilize that audit for establishment of its overhead rate, the firm shall provide in a timely manner the audit report to the Transportation Cabinet prior to the scheduled audit.

(b) The External Audit Branch of the Transportation Cabinet shall review any audit submitted to the Transportation Cabinet pursuant to the provisions of paragraph (a) of this subsection. If necessary for an adequate review, the firm shall provide a copy of the audit work papers in addition to the audit report.

(c) The External Audit Branch of the Transportation Cabinet may approve the audit for use, disapprove the audit for use, or approve the audit based on limitations imposed by the Transportation Cabinet pursuant to 600 KAR 6:070.

(d) Subject to the review performed in paragraph (b) of this subsection and any adjustments made based on limitations imposed by the Kentucky Transportation Cabinet pursuant to 600 KAR 6:070, the negotiation unit may use the overhead rates, wage rates, and direct project expenses from an audit submitted pursuant to paragraph (a) of this subsection in negotiating a fee. This shall only be done with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses.

(3) Quarterly, the Division of Professional Services shall select a minimum of one (1) and a maximum of three (3) lump sum contracts that have been completed during the previous three (3) months and shall request an audit from the External Audit Branch.

Section 4. Audit Standards. (1) The Transportation Cabinet when auditing a firm shall abide by the provisions of the following:

(a) Government Auditing Standards, 1994 Revision" by the Comptroller General of the United States;

(b) "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)", copyright 1995 by the American Institute of Certified Public Accountants, Inc.;

(c) 48 CFR Part 31, "Contract Cost Principles and Procedures", as effective October 1, 1995;

(d) 48 CFR Part 30, "Cost Accounting Standards Administration", as effective October 1, 1995, but only as it relates to 48 CFR Part 31;

(e) 48 CFR Chapter 99, Subchapter B, "Procurement Practices and Cost Accounting Standards", as effective March 30, 1995;

(f) 26 CFR Part 1.167, "Depreciation", as effective July 18, 1995, but only when the firm does not have an acceptable depreciation schedule in effect; and

(g) Pronouncements of the Financial Accounting Standards Board.

(2) The "Government Auditing Standards" and "Codification of Statements on Auditing Standards" are incorporated by reference as a part of this administrative regulation.

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(3) The term "common control" as it is used in 48 CFR Part 31 shall be determined to exist when the companies or the principals of the company involved in real property renting, leasing arrangements, or joint ventures share common ownership of twenty (20) percent or more.

Section 5. Appeal of Audit Findings. (1) If a firm disagrees with the final results of an audit performed or approved by the Transportation Cabinet, the firm may appeal within forty-five (45) days of the date the final audit report is transmitted to the Audit Review Committee of the Transportation Cabinet.

(2) The Audit Review Committee shall consist of the following:

(a) Commissioner of the Department of Fiscal Management, Chair;

(b) Deputy State Highway Engineer for Project Development; and

(c) General counsel.

(3) A committee member may appoint a proxy to serve on this committee.

(4) If the firm is not satisfied with the decision of the Audit Review Committee, he may further appeal within thirty (30) days of transmittal of the decision to the Secretary of the Transportation Cabinet.

Section 6. Material Incorporated by Reference. All material incorporated by reference as a part of this administrative regulation may be obtained, viewed, or copied at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-7008. The office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

Section 7. Repeal. 600 KAR 1:101 is hereby repealed.

J.M. YOWELL, P.E., State Highway Engineer

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: December 28, 1995

FILED WITH LRC: December 14, 1995 at 11 a.m.

PUBLIC HEARING A public comment hearing on this administrative regulation will be held on January 29, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 24, 1996 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 January 24, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until January 29, 1996. 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

Agency contact person: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts. Therefore, all of these

firms must maintain their records and have their books audited in accordance with the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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:

The only cost to the firms is of the audit and the administrative requirements associated with the audit.

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

1. First year following implementation: The firms are required to maintain their records in accordance with 48 CFR Part 31.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to perform many audits each year.

(a) Direct and indirect costs or savings: The annual cost for the External Audit Branch to perform this function is approximately \$200,000.

1. First year: The total cost to the Transportation Cabinet is approximately \$200,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Performance of the audit and preparation of the audit documents.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not setting forth any more of the audit criteria than is currently set forth in 600 KAR 1:101 was rejected because the consultant community needs to know what restrictions will apply and what standards will be followed in the performance of the audit.

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? Yes. Explain: All record keeping and audits must be done according to the same standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 48 CFR Part 31.

2. State compliance standards. The state has mandated that both the Transportation Cabinet and its consultants comply with the federal acquisition regulations.

3. Minimum or uniform standards contained in the federal mandate. The federal mandates specify the accounting procedures the firms must use and the auditing procedures the Transportation Cabinet must follow.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The accounting procedures are extended to all prequalified firms regardless of the source of funding for a particular project since any prequalified consultant will be able to submit a proposal on a federally-funded project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A prequalified firm may be selected for a federally-funded project at any time. Therefore, even if it has only previously been selected for state-funded projects, it has to maintain its financial records in accordance with the federal mandate.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(New Administrative Regulation)**

704 KAR 20:690. Kentucky Teacher Internship Program.

RELATES TO: KRS 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: 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 initial certification in Kentucky shall serve a one (1) year internship. This administrative 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.

Section 1. Basis for Professional Judgment by the Teacher Intern Committee. (1) In arriving at its professional judgment, the beginning teacher committee shall take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the intern period. The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:

- (a) A systematic observation of classroom performance;
- (b) A review of portfolio materials that shall be developed by the teacher intern; and
- (c) A review of the response of the teacher intern to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the period of internship.

(2) As a significant part of the process, the beginning teacher committee shall utilize the New Teacher Standards for Preparation and Certification adopted by the Education Professional Standards Board and specified in 704 KAR 20:670.

(3) The beginning teacher committee shall comply with procedures specified in "Guiding and Assessing Teacher Effectiveness: A Handbook for Kentucky Teacher Internship Program Participants", June 1995, which is incorporated herein by reference.

(4) The documents specified in subsections (2) and (3) of this section may be inspected and copied at the Division of Testing and Internship, Office of Teacher Education and Certification, Kentucky Department of Education, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 2. Committee Membership Appointment. (1) School

districts shall recruit a pool of resource teachers to complete the Kentucky Teacher Intern Program training in order to establish eligibility for appointment to teacher intern committees.

(2) Principal members and resource teachers shall be recommended by the employing school district for appointments by the Office of Teacher Education and Certification to teacher intern committees.

(3) When the internship is established at a nationally or regionally accredited nonpublic school in which a certified principal is not employed, the guidelines of the accrediting organization for designating the school head or school leader shall be used by the employing school in making the recommendation for appointment of the principal member. If no guidelines exist, a written rationale for appointment of the person to serve as the principal member shall be sent to the Office of Teacher Education and Certification for approval.

(4) The Office of Teacher Education and Certification shall consult with representatives of the teacher training institutions with respect to the school districts and the geographical area to be served by teacher educator members on teacher intern committees.

Section 3. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship may be completed during one (1) of the following:

- (a) No less than 140 days of teaching in the classroom during one (1) school year; or
- (b) Two (2) semesters of no less than seventy (70) days each of classroom teaching in more than one (1) school year.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except when the date of employment does not allow for completion of at least seventy (70) days of employment during the school year. In such instances, where the period of employment is less than seventy (70) days in a school year, the local school district may declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate. The employing school district shall be responsible for providing assistance and supervision to the new teacher during such period of employment under an emergency certificate.

(3) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern.

Section 4. Designation and Duties of Chair and Requirements for Timing and Content of Intern Committee Meetings. (1) The principal member of the three (3) person intern committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts by scheduling observations and committee meetings. The chair shall be responsible for collecting and filing reports of the intern committee as required by this administrative regulation.

(2) The chair shall establish a schedule that provides the following sequence of meetings for full-year assignments. This schedule shall be observed except in those circumstances which warrant change and in which the change is agreed to by all parties:

(a) The first meeting shall be held within ten (10) instructional days following the appointment of committee members or completion of training by committee members and shall be held prior to the conduct of any classroom observations of the teacher intern;

(b) The second meeting shall be held within sixty (60) instructional days following the first meeting and shall have been preceded by classroom observations by all committee members;

(c) The third meeting shall be held within 120 instructional days following the first meeting and shall have been preceded by a second set of classroom observations by all committee members; and

(d) The fourth meeting shall be held within 140 instructional days following the first meeting and shall have been preceded by a third set of classroom observations by all committee members.

(3) Second semester committees shall establish a meeting schedule that observes the time sequences identified above for the

full-year interns but which shall span two (2) school years.

(4) Classroom observations conducted by committee members shall be of at least one (1) hour or one (1) class period in duration and in the classroom or at the work station of the teacher intern. Additional classroom observations may be conducted at the option of the committee. All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

(5) All members of the committee shall attend all four (4) meetings of the committee, except that the teacher educator member may be excused for the first meeting.

(6)(a) At the first meeting of the intern committee, the following items shall be addressed:

1. Establishment of expectations on the part of the teacher intern and each committee member;
2. Review of the procedures and materials for classroom observations;
3. Explanation of the use of classroom observation data in designing the teacher intern's professional development plan;
4. Explanation of requirements for the portfolio to be developed by the teacher intern;
5. Identification of a general schedule for the events to take place during the internship program; and
6. Discussion of suggestions for the work of the resource teacher with the teacher intern.

(b) The primary purpose of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations and reports of the resource teacher that shall support the growth of the teacher intern.

(c) The professional development plan (PDP) shall be initiated at the second committee meeting. The PDP shall reflect the committee's suggestions from classroom observations and informal data. The committee shall initiate review of the portfolio.

(d) The third meeting shall include a restatement of expectations for the performance of the teacher intern, restatement of suggestions by the committee members for the assistance by the resource teacher, and incorporation of these expectations and suggestions for assistance into a modified PDP.

(e) The fourth meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship.

Section 5. Decision by the Intern Committee, Reporting and Certification Actions. (1) The decision of the intern committee as to satisfactory completion of the internship for all full-year interns shall be reported by the chair to the local school superintendent or other employer and to the Office of Teacher Education and Certification by April 15 or no later than two (2) weeks following the final committee meeting.

(2) If a teacher intern's performance is judged by the intern committee to be unsatisfactory, the intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon employment within the period of validity of the statement of eligibility for internship. However, if the teacher is not reemployed during the period of validity of the statement of eligibility, the teacher shall requalify for admission to the remaining one year of internship by meeting the requirements in effect at the time of reapplication for certification.

(3) If the teacher intern is initially employed during the second semester of a school year, a progress report based upon the orientation meeting and at least one (1) set of classroom observations and report of subsequent committee meeting shall be sent by the committee chairperson to the local school superintendent or other employer and to the Office of Teacher Education and Certification no later than May 15. The teacher intern may continue the internship with employment for a semester during a subsequent school year.

Section 6. Payments to Committee Members (1) Within the provisions of the budgetary act, the Office of Teacher Education and Certification shall contract with the local school district, or make other appropriate arrangements, for the direct service of a resource teacher to each teacher intern and for participation in classroom observations and committee meetings. In recognition of service outside the normal working hours, a stipend not to exceed \$1,000 for a year of service shall be paid. Any services for less than one (1) year or for less than the required number of hours outside the normal working hours shall be reimbursed on a pro-rata basis for the actual services performed. The contract with local school districts shall also provide for the employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist the intern teacher during normal working hours.

Section 7. Complaints. (1) Complaints by teacher interns shall be reviewed by a committee of four (4) persons named on an annual basis by the Education Professional Standards Board. The review committee shall include one (1) teacher, one (1) principal, one (1) teacher educator, and one (1) employee of the Office of Teacher Education and Certification. No committee member shall take part in any decision in which the member has an interest or is biased.

(2) The committee shall review the written complaint by the teacher intern, all committee reports and additional documentation, and other written information requested by the committee. Its decision shall be limited to written information of compliance with the following procedural requirements:

- (a) At least fifty (50) hours outside normal working hours spent by the resource teacher in assisting the teacher intern;
- (b) Assignment of committee members in accordance with legal requirements;
- (c) Compliance with specified procedures for the timing, content, reporting, and signing of classroom observation forms, committee meeting forms, and time forms; and
- (d) Substantial agreement between classroom observation reports, professional development plans, committee meeting reports, and the final decision of the committee on satisfactory completion of the internship, with particular emphasis on correlations between the third and fourth meetings of the intern committee.

(3) At least three (3) members of the committee shall be present, or have reviewed all materials and provided a written opinion on the complaint, in order for a decision to be made.

(4) The committee shall make a decision on the complaint within sixty (60) days following the receipt of such complaint, unless good cause exists for additional time.

(5) If the decision of "unsuccessful" by an intern committee is not upheld, the Office of Teacher Education and Certification shall issue the appropriate certificate to the teacher intern.

(6) If the decision of "unsuccessful" by an intern committee is upheld, the Office of Teacher Education and Certification shall issue the statement of eligibility for Internship, unless the intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program or the period of validity of the statement of eligibility has expired.

Section 8. Repeal of 704 KAR 20:320. 704 KAR 20:320, Beginning teacher internship program, is hereby repealed.

LYDIA COFFEY, Vice Chair

APPROVED BY AGENCY: November 28, 1995

FILED WITH LRC: December 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 26, 1996 at 10 a.m. at the Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1996, five days prior to hearing, of their intent to attend. If no notification of

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intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

(11) TIERING: Is tiering applied? No. Same requirements for everyone.

REGULATORY IMPACT ANALYSIS

Contact person: Rita Osborne

(1) Type and number of entities affected: Approximately 2500 teacher interns annually, principals, resource teachers and university educators who serve on the intern committees affected.

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

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

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

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

1. First year following implementation: Routine filing of reports.

2. Second and subsequent years: Routine filing of reports.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Payment to resource teacher, travel cost to complaint committee members, and training cost for the intern committee members. Approximately \$4,000,000 (already allocated in budget).

2. Continuing costs or savings: Approximately \$4,000,000 plus (requested in new biennial budget).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Routine processing of reports.

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: EPSB is charged with implementing KRS 161.030 and can only do so by policymaking through a regulation.

(8) Assessment of expected benefits:

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

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

(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: None

(10) Any additional information or comments: None

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the December 4, 1995

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 4, 1995, at 10 a.m. in Room 149 of the Capitol Annex. Senator Nick Kafoglis, Acting Chairman, called the meeting to order, and the secretary called the roll. The minutes of the November 6, 1995 meeting were approved.

Present were:

Members: Senator Nick Kafoglis, Acting Chairman, Senator Fred Bradley; Representatives Woody Allen, James Bruce and Jimmy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Patrice Carroll, Susan Eastman, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

Guests: Mack Bushart, George Russell, Maryellen Allen, Board of Elections; Denise Placido, Sue G. Simon, Department for the Blind; Gail Prewitt, Angela C. Robinson, Finance and Administration Cabinet; Dave Nicholas, Division of Occupations and Professions; Jody Curry, Natural Resources and Environmental Protection Cabinet; Jack Damron, Brenda Priestly, Department of Corrections; Jean Ann Gabbard, Louis F. Mathias, Jr., Michael R. Duncan, Kentucky State Police; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Don Coffman, Department of Education; Ronda Tamme, Clara DeMoss, Education Professional Standards Board; Gary Davis, Robert L. Blackburn, Frank Dickerson, Kentucky Workers' Compensation Funding Commission; Pam Helton, Gordon Goad, Alcoholic Beverage Control; Mark C. Frost, Deborah T. Eversole, Public Service Commission; Karen Doyle, Michael Littlefield, Jeanne Southworth, Cabinet for Human Resources; Jack Hall, Mike Hammons, Health Policy Board; Carl Sumner, State Farm; Roy Strange, AIK; Dennis Brooks, Cooperative Care - Ephraim McDowell Regional Medical Center; Jan Gould, Kentucky Retail Federation; Michael Wooden, HIAA; Bill Doll, Jackson & Kelly - Kentucky Medical Association; Mike Helton, MMLEK; Peggy Porter, Blue Cross Blue Shield of Kentucky; Nancy Galvagni, Kentucky Hospital Association; Kirk L. Miller, Custom Health Plans, Inc.; Joel C. Morgan, Healthwise of Kentucky, Ltd.; Steve Russell, John McCarthy, Richard Brown, Marie Alagia-Cull, Humana.

The Subcommittee determined that the following administrative regulation is no longer deficient:

**Natural Resources and Environmental Protection Cabinet:
Department for Environmental Protection: Environmental
Protection**

401 KAR 100:010. General administrative hearing provisions. Subcommittee staff stated that: (1) in November of 1994, the Subcommittee found this administrative regulation deficient because: (a) Senator Preston stated that it failed to comply with KRS 224.10-410 as it relates to the burden of proof when the secretary issues an order to abate or alleviate a hazard; (b) Section 14(5) improperly provided that: "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..."; and (c) the burden of proof must always be upon the cabinet to prove that the condition does in fact exist; and (2) the cabinet: (a) requested that the Subcommittee remove the finding of deficiency; (b) is deleting Section 14(5) of this administrative regulation to remove the language relating to the standard for the burden of proof, which the Subcommittee found objectionable because: 1. KRS 224.10-410 provides that the cabinet shall carry the burden of proof; 2. the statute mandates that the cabinet has the burden of proof; and 3. provides that: "as soon as possible thereafter, not to exceed ten (10) days, the secretary shall provide the person or persons an opportunity to be heard and present proof that such condition or activity" is not a violation.

In response to a question from Senator Kafoglis, Subcommittee

staff stated that although Senator Preston was unable to be present today because of an illness, he: (1) was advised prior to the Subcommittee meeting of the cabinet's proposed amendment; and (2) recommended that the Subcommittee remove the finding of deficiency.

The Subcommittee approved a motion by Representative Allen to remove the finding of deficiency.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:210. Three (3) judge panel procedures. Section 2 of this administrative regulation was amended to comply with: (1) KRS 13A.220(4) format requirements; and (2) KRS 13A.222(4)(j), requiring the use of the singular tense. Pursuant to KRS 13A.040(9), the Regulations Compiler corrected an inadvertent omission of "(2)".

Board for Specialists in Hearing Instruments

201 KAR 7:040. Examinations. This administrative regulation was amended as follows: (1) Section 1(1),(3),(5), and (6) were amended to comply with KRS 13A.222(4)(j), requiring the use of the singular tense and KRS 13A.222(4)(a); and (2) Section 1(6) was amended to establish the additional education and training, and its supporting documentation, for an applicant who fails three times to pass a section of an examination.

Board of Veterinary Examiners

201 KAR 16:050. Continuing education. In response to a question by Representative Bruce, Dave Nicholas, Executive Director, Division of Occupations and Professions, stated that the veterinary technicians requested the extension of the continuing education requirements to them. In response to a question by Representative Lee, Subcommittee staff stated that the statutory authority issues raised by the initial review would be been resolved by the proposed amendments.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct citations of statutes; (2) the NECESSITY AND FUNCTIONS paragraph, Sections 1(1) and (2), 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of 13A.222(4); (2) Sections 2 was amended to specify required forms; and (3) Section 5 was amended to incorporate required forms by reference.

Kentucky Board of Registration for Professional Geologists

201 KAR 31:050. Renewals. This administrative regulation was amended as follows: (1) The NECESSITY AND FUNCTION paragraph was amended to correct the citation of statutes; (2) the NECESSITY AND FUNCTION paragraph and Sections 1 through 4 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 2 was amended to delete the requirement for the payment of a late renewal fee, because it is not authorized by KRS Chapter 322A.

Kentucky Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 33:010. Fees. In response to a question by Representative Bruce, Dave Nicholas, Executive Director, Division of Occupations and Professions, stated that: (1) this administrative regulation established fees, pursuant to the statute authorizing fees which was

enacted during the 1994 Regular Session of the General Assembly; and (2) the fees established by this administrative regulation are: (a) the first fees for application, renewal, and reinstatement imposed on licensees and holders of certificates; and (b) not an increase in fees. In response to a question by Representative Allen, Mr. Nicholas stated that: (1) this is the first time fees have been imposed; and (2) prior to the enactment of the 1994 legislation, the fees were: (a) established by statute; and (b) the same as those established by this administrative regulation, \$50.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) The NECESSITY AND FUNCTION paragraphs, and (2) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 33:020. Renewals. This administrative regulation was amended as follows: (1) Sections 1(1),(2),(3), 2(1),(2), 3(1),(2), 4, and 4(1),(2) were amended to comply with the format requirements of KRS 13A.220(4) and the drafting requirements of KRS 13A.222(4); (2) Section 1(3) was amended to correct the cross reference to 201 KAR 33:010; and (3) delete language that repeated or summarized statutory language, pursuant to KRS 13A.120(2)(e),(f); and (4) in various sections, the terms referring to licensees and certificate holders were corrected to comply with statutory terms.

201 KAR 33:040. Compensation of board members. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and the NECESSITY AND FUNCTION paragraphs, and Section 1 were amended to correct the citation of statutory authority; and (2) the NECESSITY AND FUNCTION paragraph and Section 1 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Subcommittee staff stated that: (1) while KRS 310.040(5) provided that "the department" would establish the compensation of Board members, KRS Chapter 310 attached the Board to the Finance Cabinet only for administrative purposes; and (2) it appeared that the intent was for the Board to establish its members compensation. The Subcommittee approved a motion referring this issue to LRC for transmittal to the appropriate legislative subcommittee for legislation to clarify authority to establish Board member compensation.

Justice Cabinet: Department of Corrections: Office of the Secretary

Jack Damron, Counsel to the Cabinet, appeared before the Subcommittee for the following Department of Corrections administrative regulations.

501 KAR 6:030. Kentucky State Reformatory. This administrative regulation was amended to correct the citation of statutes. Senator Kafoglis asked what restrictions there were on visitors. Mr. Damron said the Department can ban visitors and gave an example of banning a visitor if an inmate is found to have drugs immediately after a visit by that particular visitor. Representative Lee then asked if the Department has a right to deny volunteers access to inmates without a reason. Mr. Damron said yes they do have that right, but only do it when there is a reason.

501 KAR 6:040. Kentucky State Penitentiary. This administrative regulation was amended to correct the citation of statutes. Mr. Damron requested that a Subcommittee member offer a motion to amend this administrative regulation to delete the option of inmates wearing their own personal clothing. The motion to amend was made by Representative Bruce and passed.

501 KAR 6:120. Blackburn Correctional Complex. This administrative regulation was amended to correct the citation of statutes, to add references, and make other clarifying changes. The amendment passed.

501 KAR 6:130. Western Kentucky Correctional Complex. This administrative regulation was amended to delete the provision permitting free meals to be provided to employees and visitors. Representative Lee asked if any employees have received free

meals. Mr. Damron said that they had. Representative Lee asked what would happen if that continued. Mr. Damron said that disciplinary action would be taken. The amendment passed.

501 KAR 6:170. Green River Correctional Complex. This administrative regulation was amended to correct citation of statutes and give the notice of discharge to victims as required by law. A question had been raised that inmate rights seem to vary by institution. Mr. Damron responded that because of different levels of incarceration, and the fact that the physical plants of the different institutions vary greatly, inmate rights and responsibilities do vary greatly. The amendment passed.

Department of State Police: Candidate Selection

Louis Mathias, Jr., attorney for the Department, and Jean Ann Gabbard, Personnel Director, appeared before the Subcommittee, representing the Department for the following administrative regulations.

502 KAR 45:005 (& E). Definitions. This administrative regulation was amended to arrange the definitions in alphabetical order.

502 KAR 45:045 (& E). Written examination. This administrative regulation was amended to comply with KRS Chapter 13A drafting requirements.

502 KAR 45:055 (& E). Oral interview. This administrative regulation was amended to comply with KRS Chapter 13A drafting requirements. Specifically in Section 2(3) the proposed administrative regulation indicated no change in the percentage weight of the oral interview score. The existing oral interview score weight was 60%, and the proposed administrative regulation showed 40%. The amendment added the underlining and bracketing to comply with the proper drafting requirements of KRS Chapter 13A showing the change from 60% to 40%.

502 KAR 45:075 (& E). Register. In Section 4, Line 6, the word "their" was deleted and replaced with the word "his".

502 KAR 45:085 (& E). Medical examination. In Section 2, the second sentence, was clarified to indicate that the exam is to determine whether an applicant is color blind.

502 KAR 45:145 (& E). Merit Pay Program. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct the citation of statutes; (2) Section 1 was amended to delete "pay" and insert the appropriate term, "annual salary"; (3) Section 2 was amended to: (a) delete language referring to the Merit Pay Program adopted by the commissioner, because this administrative language is the Merit Pay Program which, by the promulgation of this administrative regulation, is adopted; and (b) to comply with KRS 13A.222(4)(b) requiring the use of "shall" to express a duty or obligation; and (4) Section 2(b) was amended to delete the term "assessable SP" and insert language stating that the restriction relates to an accident involving a state police vehicle in which the officer was at fault.

502 KAR 45:150 (& E). Content Based Task Test (CBTT). Section 2 was amended to make grammatical corrections.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:025. Transporting hazardous materials by air or highway. This administrative regulation was amended to: (1) correct a statutory citation in the RELATES TO; (2) delete an unnecessary citation in the STATUTORY AUTHORITY section; and (3) correct a citation, and delete a reference to House Bill 448 in the NECESSITY AND FUNCTION section.

In response to a question by Senator Kafoglis, Subcommittee staff stated that the proposed amendments corrected the issues relating to statutory authority.

Labor Cabinet: Workers' Compensation Funding Commission

803 KAR 30:010. Special fund assessments. In response to a question by Representative Jim Bruce, Gary Davison, Interim Executive Director of the Kentucky Workers' Funding Commission,

and Frank Dickerson, the Commission's General Counsel, stated that this administrative regulation: (1) is the first comprehensive administrative regulation that the funding commission has promulgated since it was created in 1987 by House Bill 1; (2) established the procedures and forms to be used by three classes of employer taxpayers when remitting and reporting special fund assessments to the commission; (3) did not increase the workers comp assessment; (4) established the policies and procedures that have been used for several years into an administrative regulation; and (5) did not impose additional duties on taxpayers to submit additional forms or documents.

In response to a question by Representative Bruce relating to proposed rates, Mr. Dickerson stated that: (1) the rate was based on the premiums for workers comp policies which is: (a) 9.7% for all employers and (b) an additional 25.7% for those involved in the severencing and processing of coal; (2) 9.7% is also the rate for self-insured employers; (3) 25.7% is the rate for a simulated-calculated premium based upon a formula developed by the Department of Workers Claims; and (4) while the special fund assessment rate is the same for all taxpayers, the distinguishing factor for each classification of employer taxpayer is based upon the premium; for example: (a) for private insurance companies, the basis for the special fund assessment is the premium for the policy of workers comp coverage, (b) the premium (or assessment) base for the group self-insureds are the contributions from the members of the group to the group; and (c) individuals assessments are done by the Department of Workers Claims by calculating a premium based upon three years of: 1. wages, 2. injury experience and 3. medical payments.

Representative Jimmie Lee: (1) stated that he had received several phone calls concerning insurance companies performing audits of small businesses and declaring waivers to be invalid; (2) related a hypothetical situation involving the "waiver" of workers compensation coverage; and (3) asked commission representatives to clarify how coverage might be determined when there has been a valid waiver.

Commission representatives stated that the: (1) Department of Workers Claims determines coverage issues; (2) Kentucky case law tends to: (a) scrutinize and discourage recognition of waivers between consenting parties if there is an injured worker involved; and (b) examine the voluntariness of the waiver; (3) statute: (a) clearly allows persons to decline workers comp coverage; and (b) provides that the prime contractor is responsible for the injuries of his subcontractor or his employees; and (c) may be the statutory provision under which insurance companies are declaring waivers to be invalid.

At Representative Lee's request, agency personnel agreed: (1) to examine the question of workers comp waivers more closely; and (2) advise him of any reforms needed in the workers comp law that may need to be referred to the committee of jurisdiction for review.

In response to a question by Representative Jim Bruce, Mr. Dickerson stated that: (1) he was unable to provide specific information to justify why the commission, which was formed in 1987, waited until now to promulgate the first administrative regulation governing the procedures and standards for remittance and reporting of special fund assessments; (2) the frequency in the turn over of executive directors may also have been a factor in the reluctance to adopt regulatory law; and (3) since his employment as general counsel, he has advocated the need to place all policies and procedures that interpret or implement law into administrative regulations.

In response to a question by Representative Woody Allen relating to comparable rates in surrounding states, agency representatives stated that: (1) special fund assessment rates in other states are not as high as the rate in Kentucky; (2) the rationale for a higher rate is Kentucky's second injury fund; (3) the special fund is one of the largest in the nation; (4) this special fund becomes a party to a great majority of the awards much more so than other states; and (5) they believe that while Tennessee has a federally-administered program for black lung claims which saves it a great deal of administrative money, the savings entails the risk of giving up oversight of the

program to the federal government.

In response to a question by Representative Allen relating to the need for legal representation when filing a workers comp claim, Mr. Dickerson stated that: (1) Walt Turner would have the exact figures for such a request; and (2) based upon his experience as a former practicing attorney in this field: (a) a majority of injury cases are settled without the involvement of an attorney; and (b) many do involve attorneys at various stages in the claim process.

Representative Allen recommended an administrative mechanism which many states use to avoid the claimant costs in seeking legal representation.

In response to a question by Representative Jim Bruce, Mr. Dickerson stated that physician's depositions do result in a great deal of money.

Public Service Commission: Utilities

807 KAR 5:076. Alternative rate adjustment procedure for small utilities. Subcommittee staff stated that the commission agreed to the following amendments: (1) deletion of prohibited language in the NECESSITY AND FUNCTION statement, and Sections 2 and 4, pursuant to KRS 13A.222; and (2) reformatting of Section 2, pursuant to KRS 13A.220(4) and 13A.222.

In response to a question by Representative Bruce, Debra Eversole, Commission attorney, stated that: (1) this administrative regulation governed an alternative rate adjustment procedure; and (2) small utilities use this procedure to propose changes to their rates when necessary.

Cabinet for Human Resources: Department for Mental Health and Mental Retardation: Mental Health

908 KAR 2:060. Mental Health and Mental Retardation manuals for funding instructions, program policies and standards, and reimbursement guidelines. Mike Littlefield, department policy analyst representing the department stated that the: (1) proposed amendments: (a) incorporated by reference the September 1, 1995 edition of three administrative manuals; and (b) deleted two manuals that are obsolete; and (2) department agreed with the amendments suggested by Subcommittee staff.

Subcommittee staff stated that the amendment: (1) deletes a superfluous and repetitious phrase in Sections 1, 2, and 3; and (2) moves the phrase to a new Section 4 directing how and where the manuals may be obtained.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

State Board of Elections: Voting

31 KAR 5:020E. Placement of voting machines. George Russell, Executive Director stated that the Board had agreed to amend the ordinary version of this administrative regulation pursuant to the suggested amendments submitted by Subcommittee staff after review of this emergency administrative regulation. Subcommittee staff stated that the amendments that would be made to the ordinary administrative regulation related to KRS Chapter 13A drafting and format requirements.

Department of State: Registry of Election Finance: Reports and Forms

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

32 KAR 1:170E. Political party activities.

George Russell, Executive Director stated that the Board had agreed to amend the ordinary version of these administrative regulations pursuant to the suggested amendments submitted by Subcommittee staff after review of these emergency administrative regulations. Subcommittee staff stated that the amendments that would be made to the ordinary administrative regulations related to KRS Chapter 13A drafting and format requirements.

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With regard to 32 KAR 1:170E, Political party activities, in response to a question by Representative Bruce, Mr. Russell stated that "political party activities" referred to the campaign finance law requirements governing political party excessive committee advertising for the entire slate instead of for a particular candidate in the Governor's race.

In response to questions by Senator Kafoglis, Mr. Russell stated that: (1) individual contributions that did not exceed \$100 were considered "in-kind"; and (2) a "joint donation", such as a contribution by three people of \$100 to pay for a \$300 advertisement was prohibited.

Finance and Administration Cabinet: Personnel Pilot Programs

200 KAR 22:090E. Comprehensive Employment Manual of the Workforce Development Cabinet's Department for the Blind for us in the Pilot Personnel Program. Subcommittee staff stated that written verification of the approval of the Employment Manual by the Personnel Steering Committee had been received.

Denise Placido, stated that the: (1) Department of the Blind with the assistance of the and Department of Vocational Rehabilitation had developed this pilot program to increase employment outcomes for clients and cost savings; and (2) program was a comprehensive revision of procedures governing the: (a) appointment process; (b) allowable political activities; (c) time and attendance; (d) employee classification and compensation; (e) grievance procedures; and (f) employment evaluations; and (3) program had been: (a) developed through employee input; (b) approved by the Steering Committee; and (c) ratified by the employees.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:090. Frankfort Career Development Center.

501 KAR 6:110. Roederer Correctional Complex.

Department of State Police: Candidate Selection

502 KAR 45:015 (& E). Qualifications.

502 KAR 45:035 (& E). Application.

502 KAR 45:065 (& E). Background investigation

Transportation Cabinet: Property Acquisition and Uniform Relocation

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet. Subcommittee staff stated that: (1) the initial staff reviewer suggested amendments to complete a citation referenced in Section 8(6); (2) the department had inadvertently omitted the section number when the administrative regulation was filed; and (3) the Regulation Compiler's office confirmed the correct cross-reference with the department and included the complete citation, "Section 31", in the published version of the administrative regulation.

In response to a question by Senator Kafoglis, Sandra Pullen, representative from the Office of the Secretary, Department of Transportation, described that this administrative regulation: (1) implemented the Federal Uniform Relocation and Assistance Act; (2) also applied to state funded projects where no federal funds are involved; (3) permitted the department to implement the provisions of the Act and this administrative regulation as to the displaced property owner as though they were part of a federal project; and (4) adopted the provisions of KRS Chapter 13B relating to administrative hearings; and (5) deleted language which did not conform to the new hearing process.

In response to a question by Senator Kafoglis whether the state had treated the relocation question differently than the federal law in the past, Ms. Pullen stated: (1) the department has followed the federal law since its adoption; (2) this administrative regulation was amended and made applicable to state funded projects in the early 1980's; and (3) an administrative regulation is necessary to implement the provisions of the Act because the federal law does not set forth all of the requirements for implementation of the program.

Department of Vehicle Regulation: Traffic

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

Department of Education: Office of Chief State School Officer

701 KAR 5:110. Use of local monies to reduce unmet technology needs. Kevin Noland, Kentucky Department of Education, Associate Commissioner, Office of Legal Services stated that: (1) this administrative regulation is being amended to update the "Master Plan on Technology"; (2) many groups were involved in reviewing this plan over a one year period; (3) the substantive changes to the plan include: (a) redesigning the formula used to assess financial resources used to address unmet technology needs which, in turn, determines the amount of state funds available to a school district for technology; (b) exclusion of some types of resources from the technology formula, such as computer donations to a school district through private sources; (c) technology standards have been updated; and (d) the Master Plan included a summary of the progress in the implementation of technology in the schools to date.

Education Professional Standards Board

704 KAR 20:510. Probationary certificate for teachers of exceptional children. Clara DeMoss, Education Professional Standards Board, stated that this administrative regulation was amended to conform to the current language on the certificates issued for teachers of exceptional children.

Department of Alcoholic Beverage Control: Licensing

804 KAR 4:320 (& E). Special temporary distilled spirits and wine auction license. Gordon Goad, Department general counsel, stated that the administrative regulation governed a temporary auction license for charitable organizations.

Kentucky Health Policy Board: Administration

909 KAR 1:100 & E. Provider network certification. Mike Hammons, Board Member with the Kentucky Health Policy Board, spoke in support of this administrative regulation. He stated that HB 250 regulates solvency requirements and that the Board used the National Association of Insurance Commissioners HMO Model Act standards. He said thirty states were using this. Senator Kafoglis asked for all who wanted to speak to come to the table, and for the proponents to speak first.

Nancy Galvagni, representing the Kentucky Hospital Association (KHA), stated that the KHA was very much in support of this administrative regulation, it is in keeping with the statute, doctors and hospitals are very distinct from insurance companies, and it will help keep costs down.

Bill Doll, Kentucky Medical Association, agreed with previous speakers. He added that this administrative regulation affords opportunity for competition.

Kirk Miller, Custom Health Plans, Inc., said this administrative regulation allows them to provide health care on a regional basis and that it removes much of the overhead.

Dennis Brooks, Cooperative Care - Ephraim McDowell Regional Medical Center, said this administrative regulation will allow them to take coverage to the small employers, those typically employing three to five people.

The opponents then spoke.

Joel Morgan, representing the Kentucky HMO Association and Healthwise of Kentucky, began by raising two procedural questions: 1) That the hearing on this administrative regulation was held on December 21, 1995, and the Health Policy Board has not met since then (to approve the Statement of Consideration); and 2) That the Statement of Consideration did not address all the questions raised.

Mr. Morgan then stated that the Board has taken the position that these groups can contract just like HMOs. He said that twenty-four HMOs nationwide have failed, and that without the benefit of experience and capital, he believes we will see some of these

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provider networks fail. He cited two recent illustrations of costs: 1) Lexington Health Advantage lost \$1.2 million in its first year (1993), and \$1.4 million in its second year (1994). 2) Bluegrass Family Health lost \$625,000 in its first part year (1993) and \$1,772,000 in its second year (1994).

He said that HMOs have dramatically lowered costs, but that it takes a different mind set, that these networks are said to be local, but he disagrees, and that these networks cannot (personally) provide pharmacy benefits or durable equipment benefits. He closed by recommending strongly that the Board adopt requirements similar to the requirements for HMOs.

Steve Russell, representing Humana, began his testimony by saying that a comment had been made that these provider networks are local, but he said that they will have to provide non local care. He gave as illustration emergency care, care to college students away from home, care to those on vacation, and specialty care.

Mr. Russell said that HMOs are ten years old and have changed and provide much more now. He said the issue isn't solvency, but public protection. He recommended a change in the administrative regulation to require the same solvency and capital requirements as required by HMOs.

Representative Lee reminded those present that this Subcommittee addresses the issue of whether or not an administrative regulation complies with statutory authority and the requirements of KRS Chapter 13A.

Mr. Morgan said that is why he raised the issues that the Health Policy Board has not met and that KRS Chapter 13A requires a response to all comments. He said many of his comments were not responded to in the Statement of Consideration.

Mr. Hammons responded that the Board has acted and has addressed all the comments.

The Subcommittee had no objection to this 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:

Board of Hairdressers and Cosmetologists

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

Kentucky Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 33:030. Continuing education requirements for licensees and certificate holders.

Tourism Cabinet: Department of Travel Development: Travel Development

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

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:114E. Contractor certification.

Justice Cabinet: Department of State Police: Candidate Selection

502 KAR 45:025 (& E). Disqualification. Questions were raised concerning the meaning of the use of marijuana beyond "experimental use", as stated in Section 1(13). It was pointed out that "experimental use" was not defined, and if the term was going to be used it needed to be defined. The Agency agreed to defer this administrative regulation until the next meeting, giving time to clarify this.

Department of Education: Office of District Support: School Administration and Finance

702 KAR 3:280. School district Medicaid providers.

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 Social Services: Children's Residential Services

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

Department for Medicaid Services

907 KAR 1:009E. Physicians' services

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

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

907 KAR 1:060E. Medical transportation.

907 KAR 1:061E. Payments for transportation services.

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

The Subcommittee adjourned at 12:30 p.m. until January 8, 1995 at 10 a.m. in Room 131 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 HEALTH AND WELFARE Meeting of November 15, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of November 15, 1995, having been referred to the Committee on November 1, 1995, pursuant to KRS 13A.290(6):

201 KAR 22:070
902 KAR 20:270
904 KAR 2:001
904 KAR 3:010
908 KAR 1:320
909 KAR 1:021 & E
909 KAR 1:055 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): 902 KAR 20:270, relating to licensure of mobile health services.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The Committee took no action on the following administrative regulations at the Committee meeting:

201 KAR 22:070
904 KAR 2:001
904 KAR 3:010
908 KAR 1:320
909 KAR 1:021 & E
909 KAR 1:055 & E

Committee activity in regard to review of the above referenced administrative regulations is reflected in the minutes of the November 15, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

REASON FOR DEFICIENCY ON 902 KAR 20:270, LICENSURE OF MOBILE HEALTH SERVICES

902 KAR 20:270 provides the minimum licensure requirements for the operation of mobile health services. The regulation deletes Section 5(2)(d)(3), which required home IV therapy services to have a written agreement with a licensed home health agency detailing the responsibilities of both parties.

The intent of this section was to prohibit a home IV therapy service from administering services that might not otherwise be needed, or which might not be recommended by a home health agency that monitors, on a continuing basis, the health needs of a home-bound patient. The home health agency is in a better position assess the patient's needs.

The issue came to the forefront in *Kentucky Home Therapeutics v CHR*, 93-CI-01524, filed in 1993. The Franklin Circuit Court's decision of September 26, 1994 permanently enjoined the Cabinet for Human Resources from enforcing Section 5(2)(d)(3) as it was previously written. The Court's reasoning was that this section allowed a home health agency to withhold, through arbitrary means, consent for the service, and to subject the home IV therapy service to the "will or caprice" of the home health agency. Home health agencies could refuse to enter into a written agreement without basis

or justification.

The Court did not rule out the possibility that this section could be rewritten to establish guidelines for a home health agency to use when contracting with home IV therapy service providers, or when deciding whether the service would be necessary and appropriate for in-home care. Guidelines would limit the home health agency's ability to act arbitrarily. A review mechanism could be established by which a home IV therapy service could bring forth complaints about a particular home health agency that ignored the regulations.

This is what should have been done. Rather than deleting the requirement for a written agreement, the Cabinet for Human Resources should have established guidelines for home health agencies and their relationships with home IV therapy services. Coordination of treatment is important, and the home health agency is in the best position to care for the patient's needs on an ongoing basis. 902 KAR 20:270, as amended, is therefore deficient.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates G2

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 G12

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 G19

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.

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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
Expired		7-21-95
32 KAR 1:150E	2646	3-22-95
Expired		10-15-95
200 KAR 22:030E	2648	3-24-95
Replaced		10-13-95
201 KAR 32:010E	2969	4-27-95
Replaced		10-19-95
201 KAR 32:020E	2970	4-27-95
Replaced		10-19-95
201 KAR 32:030E	2972	4-27-95
Replaced		10-19-95
302 KAR 20:076E	2972	5-12-95
Replaced		10-11-95
401 KAR 42:060E	20 Ky.R.	2-15-94
Replaced		11-14-95
401 KAR 42:070E	20 Ky.R.	2-15-94
Replaced		11-14-95
401 KAR 42:080E	20 Ky.R.	2-15-94
Replaced		11-14-95
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
Expired		10-18-95
902 KAR 14:090E	2450	3-1-95
Expired		9-18-95
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
Expired		10-18-95
907 KAR 1:013E	2974	5-12-95
Withdrawn		9-28-95
907 KAR 1:585E	2665	3-21-95
Replaced		10-19-95
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)

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
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)			787 KAR 1:060E	231	6-22-95
9 KAR 1:021E	214	7-11-95	Replaced	908	11-6-95
Expires		1-18-96	787 KAR 1:070E	232	6-22-95
11 KAR 8:030E	215	7-12-95	Replaced	909	11-6-95
31 KAR 5:020E	882	10-12-95	787 KAR 1:080E	232	6-22-95
32 KAR 1:160E	694	8-30-95	Replaced	461	11-6-95
32 KAR 1:170E	883	10-10-95	787 KAR 1:090E	233	6-22-95
101 KAR 2:100E	217	7-14-95	Replaced	909	11-6-95
101 KAR 3:010E	223	7-14-95	787 KAR 1:100E	234	6-22-95
200 KAR 22:060E	20	6-15-95	Replaced	910	11-6-95
Replaced	415	10-13-95	787 KAR 1:110E	234	6-22-95
200 KAR 22:090E	884	10-13-95	Replaced	466	11-6-95
200 KAR 22:100E	1261	11-30-95	787 KAR 1:120E	237	6-22-95
200 KAR 22:110E	1262	12-11-95	Replaced	470	11-6-95
202 KAR 4:010E	1050	11-6-95	787 KAR 1:130E	237	6-22-95
301 KAR 2:221E	1051	11-3-95	Expired (ordinary withdrawn)		6-22-95
301 KAR 2:222E	1054	11-3-95	787 KAR 1:140E	237	6-22-95
301 KAR 2:223E	1057	11-3-95	Replaced	472	11-6-95
301 KAR 2:224E	1059	11-3-95	787 KAR 1:150E	238	6-22-95
301 KAR 2:225E	695	8-23-95	Replaced	473	11-6-95
301 KAR 5:001E	697	9-14-95	787 KAR 1:160E	239	6-22-95
301 KAR 5:010E	698	9-14-95	Replaced	475	11-6-95
301 KAR 5:020E	1263	12-11-95	787 KAR 1:170E	239	6-22-95
301 KAR 5:030E	1265	12-11-95	Replaced	476	11-6-95
302 KAR 20:115E	569	7-28-95	787 KAR 1:180E	240	6-22-95
415 KAR 1:114E	700	8-16-95	Replaced	478	11-6-95
501 KAR 6:020E	1061	11-15-95	787 KAR 1:190E	241	6-22-95
502 KAR 45:005E	703	8-30-95	Replaced	911	11-6-95
502 KAR 45:015E	704	8-30-95	787 KAR 1:200E	241	6-22-95
502 KAR 45:025E	705	8-30-95	Replaced	481	11-6-95
502 KAR 45:035E	706	8-30-95	787 KAR 1:210E	242	6-22-95
502 KAR 45:045E	707	8-30-95	Replaced	482	11-6-95
502 KAR 45:055E	708	8-30-95	787 KAR 1:220E	242	6-22-95
502 KAR 45:065E	709	8-30-95	Replaced	483	11-6-95
502 KAR 45:075E	710	8-30-95	787 KAR 1:230E	243	6-22-95
502 KAR 45:085E	711	8-30-95	Replaced	484	11-6-95
502 KAR 45:145E	570	8-1-95	787 KAR 1:240E	243	6-22-95
502 KAR 45:150E	712	8-30-95	Replaced	911	11-6-95
702 KAR 3:245E	571	8-15-95	787 KAR 1:250E	244	6-22-95
702 KAR 3:246E	573	8-15-95	Replaced	487	11-6-95
702 KAR 3:270E	1267	12-15-95	787 KAR 1:260E	244	6-22-95
702 KAR 7:065E	1269	12-15-95	Replaced	488	11-6-95
704 KAR 20:084E	1271	12-4-95	787 KAR 1:270E	245	6-22-95
780 KAR 2:140E	227	7-5-94	Replaced	911	11-6-95
Replaced	730	10-5-95	787 KAR 1:280E	245	6-22-95
787 KAR 1:010E	229	6-22-95	Replaced	491	11-6-95
Replaced	452	11-6-95	787 KAR 1:290E	245	6-22-95
787 KAR 1:020E	230	6-22-95	Replaced	912	11-6-95
Replaced	454	11-6-95	787 KAR 1:300E	246	6-22-95
787 KAR 1:030E	230	6-22-95	Replaced	493	11-6-95
Replaced	908	11-6-95	787 KAR 1:310E	246	6-22-95
787 KAR 1:040E	230	6-22-95	Replaced	495	11-6-95
Replaced	456	11-6-95	787 KAR 2:010E	247	6-22-95
787 KAR 1:050E	231	6-22-95	Replaced	496	11-6-95
Replaced	457	11-6-96	787 KAR 2:020E	248	6-22-95
			Replaced	912	11-6-95
			787 KAR 2:030E	248	6-22-95
			Replaced	912	11-6-95
			788 KAR 2:010E	249	6-22-95
			Replaced	1082	12-7-95
			803 KAR 2:317E	1273	12-6-95

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
803 KAR 2:320E	252	6-30-95	15 KAR 1:040	125	
803 KAR 2:403E	255	6-30-95	As Amended	587	9-7-95
803 KAR 2:404E	1275	12-6-95	31 KAR 4:100		
803 KAR 2:412E	1283	12-6-95	As Amended	274	7-26-95
803 KAR 2:425E	257	6-30-95	31 KAR 4:110		
803 KAR 2:500E	259	6-30-95	As Amended	274	7-26-95
804 KAR 4:320E	575	7-25-95	31 KAR 5:020		
815 KAR 8:040E	21	6-6-95	Amended	1088	
Replaced	915	11-6-95	32 KAR 2:210	814	
903 KAR 5:001E	713	8-28-95	As Amended	1302	
904 KAR 2:016E	1064	11-15-94	45 KAR 1:030		
Withdrawn		12-5-95	Amended	1325	
Resubmitted	1285	12-5-95	45 KAR 1:040		
904 KAR 2:460E	576	8-7-95	Amended	1327	
905 KAR 1:360E	1292	11-22-95	45 KAR 1:050		
907 KAR 1:009E	261	6-30-95	Amended	1329	
Withdrawn		9-19-95	101 KAR 1:325		
Resubmitted	885	9-19-95	Amended	1332	
907 KAR 1:010E	262	6-30-95	101 KAR 2:100		
Withdrawn		9-19-95	Amended	1089	
Resubmitted	886	9-19-95	101 KAR 3:010		
907 KAR 1:013E	887	9-28-95	Amended	1094	
907 KAR 1:014E	264	6-30-95	103 KAR 16:190	127	
Withdrawn		8-10-95	Amended	761	
907 KAR 1:015E	266	6-30-95	Withdrawn		10-18-95
Withdrawn		8-10-95	105 KAR 1:210		
907 KAR 1:060E	267	6-30-95	Amended	775	12-7-95
907 KAR 1:061E	269	6-30-95	105 KAR 1:215		
907 KAR 1:140E	895	9-27-95	Amended	777	12-7-95
907 KAR 1:505E	1071	11-6-95	106 KAR 1:091		
907 KAR 1:510E	1073	11-6-95	Amended	606	
907 KAR 1:675E	1295	12-5-95	As Amended	898	10-11-95
907 KAR 1:677E	1299	12-5-95	106 KAR 1:131		
909 KAR 1:021E	22	6-14-95	Amended	609	
Replaced	934	11-15-95	As Amended	900	10-11-95
909 KAR 1:055E	23	6-14-95	200 KAR 2:006		
Replaced	662	11-15-95	Amended	779	12-7-95
909 KAR 1:100E	578	8-15-95	200 KAR 15:010		
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	101	
9 KAR 1:010			As Amended	715	9-28-95
As Amended	273		Amended	1334	
As Amended	583	7-26-95	200 KAR 17:050		
9 KAR 1:015			Amended	104	
As Amended	25	7-6-95	As Amended	589	8-24-95
9 KAR 1:020			200 KAR 19:010		
Repealed	214	7-11-95	Recodified as 803 KAR 30:020		7-24-95
9 KAR 1:030			200 KAR 20:010		
As Amended	26	7-6-95	As Amended	32	7-6-95
9 KAR 1:035			200 KAR 22:020		
As Amended	30	7-6-95	As Amended	33	7-6-95
9 KAR 1:040			200 KAR 22:030	412	10-13-95
As Amended	273		200 KAR 22:040	413	10-13-95
As Amended	583	7-26-95	200 KAR 22:050	414	10-13-95
11 KAR 4:040			200 KAR 22:060	415	10-13-95
Amended	97		200 KAR 22:070	417	10-13-95
As Amended	584	9-7-95	200 KAR 22:080	815	12-7-95
11 KAR 12:060			200 KAR 22:090	1172	
As Amended	30	7-6-95	201 KAR 1:300		
11 KAR 12:070			As Amended	275	8-10-95
As Amended	31	7-6-95	201 KAR 7:040		
12 KAR 1:115			Amended	935	
Amended	1324		As Amended	1302	
			201 KAR 8:220		
			Amended	107	8-16-95

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
201 KAR 8:277			302 KAR 20:076	422	10-11-95
Amended	108	8-16-95	302 KAR 20:081	1179	
201 KAR 11:400			302 KAR 20:115	1179	
As Amended	717		302 KAR 31:015		
Reprint	852	10-13-95	As Amended	36	6-14-95
201 KAR 12:082			302 KAR 31:025		
Amended	613		Amended	1339	
201 KAR 16:050			302 KAR 31:040	1397	
Amended	936		302 KAR 100:010	423	10-11-95
As Amended	1302		302 KAR 100:020	424	10-11-95
201 KAR 18:129	1173		307 KAR 1:030	133	
201 KAR 20:057			As Amended	591	
Amended	305	9-20-95	As Amended	719	8-17-95
201 KAR 20:162			307 KAR 2:010		
Amended	306	9-20-95	As Amended	39	7-6-95
201 KAR 20:215			307 KAR 3:010		
Amended	1337		As Amended	40	7-6-95
201 KAR 20:240			307 KAR 4:010	135	
Amended	109		As Amended	593	
Withdrawn		8-16-95	As Amended	720	8-17-95
Amended	1338		401 KAR 5:030		
201 KAR 20:410	418	9-20-95	Amended	89	
201 KAR 22:070			As Amended	280	7-12-95
Amended	615		401 KAR 42:005	427	
As Amended	1975	11-15-95	Amended	918	11-14-95
201 KAR 30:050			401 KAR 42:011		
As Amended	277	8-10-95	Amended	315	11-14-95
201 KAR 30:120			401 KAR 42:020		
As Amended	279	8-10-95	Amended	318	
201 KAR 31:050	998		Amended	920	11-14-95
As Amended	1303		401 KAR 42:040		
201 KAR 32:010	419		Amended	321	
As Amended	903	10-19-95	Amended	921	11-14-95
201 KAR 32:020	420		401 KAR 42:060		
As Amended	903	10-19-95	Amended	323	
201 KAR 32:030	421		Amended	921	11-14-95
As Amended	904	10-19-95	401 KAR 42:070		
201 KAR 33:010	999		Amended	327	
As Amended	1304		Amended	922	11-14-95
201 KAR 33:020	999		401 KAR 42:071	432	
As Amended	1304		Amended	924	11-14-95
201 KAR 33:030	1001		401 KAR 42:080		
201 KAR 33:040	1003		Amended	331	
As Amended	1305		Amended	924	11-14-95
202 KAR 3:040	1395		401 KAR 42:090		
300 KAR 1:010	635		Amended	335	11-14-95
301 KAR 1:015			401 KAR 42:200		
Amended	308		Amended	337	11-14-95
As Amended	718	10-11-95	401 KAR 50:031	817	
301 KAR 1:085			Amended	1315	
Amended	309	10-11-95	401 KAR 50:065	434	10-11-95
301 KAR 1:201			401 KAR 59:430		
Amended	312	10-11-95	Recodified as 401 KAR 60:042		10-18-95
301 KAR 2:044			401 KAR 59:435		
Repealed	695	8-23-95	Recodified as 401 KAR 60:043		10-18-95
301 KAR 2:225	1174		401 KAR 60:042		
301 KAR 5:001	1176		Recodified from 401 KAR 59:430		10-18-95
301 KAR 5:010	1177		401 KAR 60:043		
301 KAR 6:050	816		Recodified from 401 KAR 59:435		10-18-95
As Amended	1076	11-14-95	401 KAR 100:010		
301 KAR 10:010			Amended	937	
Repealed	92	7-12-95	401 KAR 100:050	137	
302 KAR 15:010			Amended	598	10-11-95
As Amended	33	6-14-95			

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
415 KAR 1:114			501 KAR 6:090		
Amended	1343		Amended	946	
416 KAR 1:010	142	8-24-95	Amended	1102	
418 KAR 1:010			501 KAR 6:110		
Amended	92	7-12-95	Amended	948	
418 KAR 1:020			Amended	1104	
Amended	92	7-12-95	501 KAR 6:120		
418 KAR 1:030			As Amended	42	7-6-95
Amended	93	7-12-95	Amended	950	
418 KAR 1:040			Amended	1105	
Amended	94	7-12-95	501 KAR 6:130		
418 KAR 1:070			Amended	619	11-6-95
Amended	96	7-12-95	Amended	952	
500 KAR 11:001	146	9-7-95	Amended	1107	
500 KAR 11:030	436	10-13-95	501 KAR 6:140		
500 KAR 11:040	439	10-13-95	As Amended	43	7-6-95
500 KAR 11:050	441	10-13-95	Amended	1108	
500 KAR 11:060	442	10-13-95	501 KAR 6:170	443	11-6-95
500 KAR 11:070	147	9-7-95	Amended	953	
500 KAR 11:080	148	9-7-95	501 KAR 7:010		
Reprint	1030	9-7-95	Amended	1359	
500 KAR 11:090	149	9-7-95	501 KAR 7:050		
500 KAR 11:100	150	9-7-95	Amended	1360	
501 KAR 2:020			501 KAR 13:010	1402	
Amended	340		502 KAR 45:005		
As Amended	905	11-6-95	Amended	954	
501 KAR 2:040			As Amended	1305	
Amended	341		502 KAR 45:015		
As Amended	905	11-6-95	Amended	955	
501 KAR 2:050			502 KAR 45:025		
Amended	342		Amended	956	
As Amended	905	11-6-95	502 KAR 45:035		
501 KAR 2:060			Amended	957	
Amended	343		502 KAR 45:045		
As Amended	1076	12-7-95	Amended	958	
501 KAR 3:010			As Amended	1305	
Amended	1346		502 KAR 45:055		
501 KAR 3:020			Amended	959	
Amended	1347		As Amended	1305	
501 KAR 3:050			502 KAR 45:065		
Amended	1349		Amended	960	
501 KAR 3:060			502 KAR 45:075		
Amended	1353		Amended	961	
501 KAR 3:100			502 KAR 45:085		
Amended	1354		Amended	962	
501 KAR 3:140			As Amended	1306	
Amended	1355		502 KAR 45:145	1004	
501 KAR 6:020			As Amended	1306	
Amended	616	11-6-95	502 KAR 45:150	1005	
Amended	783	12-7-95	As Amended	1307	
Amended	1357		600 KAR 1:120	821	12-7-95
501 KAR 6:030			600 KAR 3:010		
Amended	943		Amended	963	
501 KAR 6:040			600 KAR 4:010		
Amended	945		Amended	1362	
Amended	1099		600 KAR 5:010		
501 KAR 6:050			Amended	302	10-3-95
Amended	785	12-7-95	600 KAR 6:010	1403	
501 KAR 6:060			600 KAR 6:020	1405	
Amended	1100		600 KAR 6:030	1406	
501 KAR 6:080			600 KAR 6:040	1407	
Amended	344	10-13-95	600 KAR 6:050	1410	
			600 KAR 6:060	1412	
			600 KAR 6:070	1414	

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
600 KAR 6:080	1419		750 KAR 1:010		
601 KAR 1:025			Amended	627	
Amended	981		As Amended	906	11-2-95
As Amended	1307		780 KAR 2:010		
601 KAR 9:074			Amended	353	
Amended	345	10-3-95	As Amended	722	10-5-95
601 KAR 9:220	824	12-7-95	780 KAR 2:020		
601 KAR 12:070	444	10-3-95	Amended	354	
603 KAR 3:080			As Amended	722	10-5-95
Amended	1367		780 KAR 2:021	445	10-5-95
603 KAR 4:035			780 KAR 2:030		
Amended	984		Amended	355	
Amended	1318		As Amended	723	10-5-95
603 KAR 5:070			780 KAR 2:035	446	
Amended	620		As Amended	724	10-5-95
As Amended	1077	11-1-95	780 KAR 2:040		
603 KAR 5:071			Amended	357	
Amended	624	11-1-95	As Amended	724	10-5-95
603 KAR 5:072			780 KAR 2:045		
Amended	348	10-3-95	Repealed	445	10-5-95
603 KAR 5:075			780 KAR 2:050		
Amended	786	12-7-95	Repealed	445	10-5-95
603 KAR 5:110			780 KAR 2:060		
Amended	350	10-3-95	Amended	358	
603 KAR 5:115			As Amended	725	10-5-95
Amended	789		780 KAR 2:070		
603 KAR 5:230			Repealed	445	10-5-95
Amended	11-10-95		780 KAR 2:080		
603 KAR 5:301			Repealed	445	10-5-95
Amended	791	12-7-95	780 KAR 2:090		
701 KAR 5:110			Amended	359	
Amended	989		As Amended	726	10-5-95
702 KAR 1:140			780 KAR 2:100		
As Amended	45	7-6-95	Amended	361	
702 KAR 3:245			As Amended	727	10-5-95
Amended	990		780 KAR 2:110		
702 KAR 3:246	1005		Amended	363	10-5-95
702 KAR 3:280	637		780 KAR 2:120		
Amended	925		Amended	364	
702 KAR 3:300	638	11-2-95	As Amended	728	10-5-95
702 KAR 7:010			780 KAR 2:130		
Amended	626	11-2-95	Amended	365	
702 KAR 7:050			As Amended	728	10-5-95
As Amended	45	7-6-95	780 KAR 2:140		
702 KAR 7:080			Amended	367	
Repealed	151	9-7-95	As Amended	730	10-5-95
702 KAR 7:081	151	9-7-95	780 KAR 2:150		
702 KAR 7:090			Repealed	445	10-5-95
Repealed	152	9-7-95	780 KAR 4:010		
702 KAR 7:091	152	9-7-95	Amended	369	
704 KAR 3:470	152	9-7-95	As Amended	731	10-5-95
704 KAR 20:055			780 KAR 4:020		
Repealed	153	9-7-95	Amended	371	
704 KAR 20:056	153	9-7-95	As Amended	732	10-5-95
704 KAR 20:305			780 KAR 4:030	447	
As Amended	283	8-3-95	As Amended	733	10-5-95
704 KAR 20:510			780 KAR 4:040	448	
Amended	992		As Amended	733	10-5-95
704 KAR 20:690	1422		780 KAR 4:050	448	
735 KAR 1:010			As Amended	734	10-5-95
As Amended	48	7-6-95	780 KAR 4:060	449	
735 KAR 1:020			As Amended	734	10-5-95
As Amended	50	7-6-95			

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
780 KAR 5:010			780 KAR 9:110		
Amended	372		Repealed	825	12-7-95
As Amended	734	10-5-95	780 KAR 9:120		
780 KAR 5:020			Repealed	825	12-7-95
Amended	373		780 KAR 9:130		
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780 KAR 5:030			780 KAR 9:131	825	12-7-95
Amended	374		781 KAR 1:040		
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780 KAR 5:040			785 KAR 1:010	639	11-2-95
Amended	375		785 KAR 1:020	641	11-2-95
As Amended	735	10-5-95	785 KAR 1:030	642	11-2-95
780 KAR 5:050			785 KAR 1:040	643	11-2-95
Amended	375		785 KAR 1:050	646	11-2-95
As Amended	735	10-5-95	785 KAR 1:060	648	11-2-95
780 KAR 7:010			785 KAR 1:070	650	11-2-95
Amended	376		785 KAR 1:080	651	11-2-95
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780 KAR 7:030			As Amended	1081	12-7-95
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780 KAR 7:032	450		787 KAR 1:030	455	
As Amended	738	10-5-95	As Amended	908	11-6-95
780 KAR 7:035			787 KAR 1:040	456	11-6-95
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780 KAR 7:036	451		787 KAR 1:060	459	
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780 KAR 7:040			787 KAR 1:070	460	
Amended	380		As Amended	909	11-6-95
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780 KAR 7:050			787 KAR 1:090	463	
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780 KAR 7:060			787 KAR 1:100	465	
Amended	381		As Amended	910	11-6-95
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Amended	382		787 KAR 1:130	471	
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780 KAR 8:010			787 KAR 1:140	472	11-6-95
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780 KAR 8:011	452		787 KAR 1:160	475	11-6-95
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780 KAR 9:010			787 KAR 1:180	478	11-6-95
Repealed	825	12-7-95	787 KAR 1:190	479	
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780 KAR 9:040			787 KAR 1:210	482	11-6-95
Repealed	825	12-7-95	787 KAR 1:220	483	11-6-95
780 KAR 9:050			787 KAR 1:230	484	11-6-95
Repealed	825	12-7-95	787 KAR 1:240	486	
780 KAR 9:060			As Amended	911	11-6-95
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780 KAR 9:070			787 KAR 1:260	488	11-6-95
Repealed	825	12-7-95	787 KAR 1:270	490	
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787 KAR 2:030	499		Amended	1383	
As Amended	912	11-6-95	815 KAR 20:078		
788 KAR 2:010	501		Amended	799	12-7-95
As Amended	1082	12-7-95	815 KAR 20:090		
803 KAR 2:320			Amended	1386	
Amended	1142		815 KAR 20:110		
803 KAR 2:403			Amended	116	9-7-95
Amended	1149		815 KAR 20:120		
803 KAR 2:500			Amended	800	12-7-95
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803 KAR 25:020			Amended	117	
Repealed	52	6-15-95	As Amended	594	9-7-95
803 KAR 25:021			815 KAR 35:030		
As Amended	52	6-15-95	Amended	630	
803 KAR 25:025			As Amended	916	11-6-95
Repealed	54	6-15-95	902 KAR 8:060		
803 KAR 25:026			Amended	1156	
As Amended	54	6-15-95	902 KAR 8:070		
803 KAR 25:150	656		Amended	1159	
As Amended	913	10-19-95	902 KAR 8:110		
803 KAR 25:170	658		Amended	1163	
Amended	926		902 KAR 8:120		
As Amended	1084	12-7-95	Amended	1164	
803 KAR 25:190			902 KAR 14:070	507	9-20-95
Amended	303		902 KAR 14:080	510	
As Amended	740	9-19-95	Amended	767	10-19-95
803 KAR 30:010	826		902 KAR 14:090	517	10-19-95
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Recodified from 200 KAR 19:010		7-24-95	Repealed	81	6-21-95
804 KAR 4:320	1008		902 KAR 20:126		
805 KAR 5:150	1181		Repealed	87	6-21-95
806 KAR 6:080			902 KAR 20:270		
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806 KAR 9:220			Amended	927	11-15-95
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806 KAR 47:020	155	9-7-95	Repealed	713	8-28-95
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807 KAR 5:076			903 KAR 5:030		
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815 KAR 7:100			Repealed	713	8-28-95
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815 KAR 8:020			Repealed	713	8-28-95
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815 KAR 8:040	505		Repealed	713	8-28-95
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815 KAR 10:040			Repealed	713	8-28-95
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903 KAR 5:150			904 KAR 2:400		
Repealed	713	8-28-95	As Amended	60	6-21-95
903 KAR 5:160			904 KAR 2:410		
Repealed	713	8-28-95	As Amended	61	6-21-95
903 KAR 5:170			Amended	1389	
Repealed	713	8-28-95	904 KAR 2:431	1188	
903 KAR 5:180			904 KAR 3:010		
Repealed	713	8-28-95	Amended	809	11-15-95
903 KAR 5:220			904 KAR 3:020		
Repealed	713	8-28-95	Amended	395	9-20-95
903 KAR 5:230			904 KAR 3:050		
Repealed	713	8-28-95	Amended	399	9-20-95
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Repealed	713	8-28-95	Amended	403	
903 KAR 5:270			As Amended	746	9-20-95
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903 KAR 5:290			Amended	407	9-20-95
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903 KAR 5:300			Expired		11-3-95
Repealed	713	8-28-95	904 KAR 3:111	1187	
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903 KAR 5:360			907 KAR 1:425		
Repealed	713	8-28-95	Repealed	895	9-27-95
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Repealed	713	8-28-95	Repealed	1071	11-6-95
903 KAR 5:380			907 KAR 1:585		
Repealed	713	8-28-95	Amended	632	10-19-95
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Repealed	713	8-28-95	As Amended	298	7-26-95
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