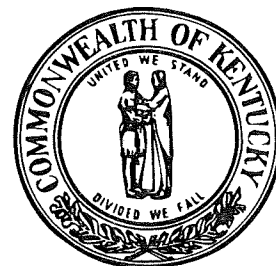


ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 22, NUMBER 9
FRIDAY, MARCH 1, 1996



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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on March 4, 1996. See tentative agenda beginning on page 1521 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 - 1521

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - March 4, 1996, 10 a.m.
Room 149, Capitol Annex**

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

GENERAL ASSEMBLY

Legislative Ethics Commission

2 KAR 2:040. Updated registration short forms for employers and legislative agents.

DEPARTMENT OF PERSONNEL

Classified

101 KAR 2:100 (& E). Leave administrative regulations. (Emergency expired 1/18/96) (Amended After Hearing)

Unclassified

101 KAR 3:010 (& E). Leave administrative regulations. (Emergency expired 1/18/96) (Amended After Hearing)

FINANCE AND ADMINISTRATION CABINET

Purchasing

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

Personnel Pilot Programs

200 KAR 22:100 (& E). 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.
200 KAR 22:110 (& E). Comprehensive Employment Manual of the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations for use in the Pilot Personnel Program.

GENERAL GOVERNMENT CABINET

Board of Medical Licensure

201 KAR 9:041. Fee schedule.
201 KAR 9:175. Physician assistants; certification and supervision.

Real Estate Commission

201 KAR 11:400E. Agency disclosure requirements.

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. (Not Amended After Hearing) (Deferred from February)

INDEPENDENT ADMINISTRATIVE BODIES

Kentucky Lottery Corporation

202 KAR 3:040. Internal audit procedures. (Deferred from February)

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

Fish

301 KAR 1:016. Use of public lands and waters at department owned lakes.

Game

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

JUSTICE CABINET

Department of Corrections

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.
501 KAR 6:040. Kentucky State Penitentiary.

TRANSPORTATION CABINET

Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises. (Amended After Hearing)

Professional Engineering and Related Services

600 KAR 6:010. Definitions. (Not Amended After Hearing)
600 KAR 6:020. Transportation Cabinet employee ethics and responsibilities in the implementation of KRS 45A.800 to 45A.835. (Not Amended After Hearing)
600 KAR 6:030. Federal requirements. (Not Amended After Hearing)
600 KAR 6:040. Prequalification of firms for professional engineering or related services. (Amended After Hearing)
600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services. (Amended After Hearing)

ADMINISTRATIVE REGISTER - 1522

600 KAR 6:060. Professional engineering service selection committee. (Not Amended After Hearing)
600 KAR 6:070. Contracting for professional engineering or related services. (Amended After Hearing)
600 KAR 6:080. Financial records and audits of firms. (Repeals 600 KAR 1:101) (Amended After Hearing)

Department of Highways

Maintenance

603 KAR 3:080. Advertising devices. (Amended After Hearing)

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Office of District Support

School Administration and Finance

702 KAR 3:270E. SEEK funding formula. (Deferred from February)

LABOR CABINET

Occupational Safety and Health (Deferred from February)

803 KAR 2:317E. Special industries.

803 KAR 2:404E. Personal protective and life saving equipment.

803 KAR 2:412E. Fall protection.

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. (Public Hearing in December)
(Extended Deadline)

Kentucky Racing Commission

Thoroughbred Racing

810 KAR 1:015. Claiming races.

CABINET FOR HEALTH SERVICES

Local Health Departments

902 KAR 8:120. Leave provisions applicable to employees of local health departments. (Amended After Hearing)

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Public Assistance

904 KAR 2:016E. Standards for need and amount; AFDC. (Deferred from February)

904 KAR 2:116E. Home Energy Assistance Program.

Food Stamp Program

904 KAR 3:041. Food Stamp Employment and Training Program. (Found Deficiency by IJC on Health and Welfare, March 15, 1995)

Department for Social Services

Child Welfare

905 KAR 1:360E. Private child care levels of care. (Deferred from February)

CABINET FOR HEALTH SERVICES

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 1:013 & E. Payments for hospital inpatient services.

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) (Deferred from February)

907 KAR 1:510E. Payments for psychiatric residential treatment facility services. (Deferred from February)

907 KAR 1:675E. Program integrity. (Deferred from February)

907 KAR 1:677E. Medicaid recipient lock-in. (Deferred from February)

Department for Mental Health and Mental Retardation

Substance Abuse

908 KAR 1:300. Chemical dependency program evaluation. (Not Amended After Hearing) (Deferred from February)

ADMINISTRATIVE REGISTER - 1523

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.

ADMINISTRATIVE REGISTER - 1524

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

COUNCIL ON HIGHER EDUCATION

Date: January 18, 1996

Council on Higher Education

(1) The subject matter of the proposed administrative regulation is **13 KAR 2:050** entitled "Tuition at state-supported institutions of higher education in Kentucky" which deals with the tuition setting practices of the Council on Higher Education.

(2) The council sets tuition rates for state-supported higher education institutions pursuant to KRS 164.020(3). The current state administrative regulation limits the number of professional schools to law, medicine and dentistry. The proposed language will make the inclusion of other professional schools easier. A change to the Necessity and Function section details the requirements of the statute with greater specificity.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 29, 1996, at 9:30 a.m., in the conference room, Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

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

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

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

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

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to March 29, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request, no later than March 11, 1996, to the following address: Council on Higher Education; Attn: Kenneth Walker, Deputy Executive Director for Finance, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601. The phone number is (502) 573-1555; the fax number is (502) 573-1535.

(b) On a request for 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 Council on Higher 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 the tuition setting authority of the Council on Higher Education is KRS 164.020(3).

(b) The state administrative regulation that the council intends to promulgate are amendments to the existing regulation 13 KAR 2:050, "Tuition at state-supported institutions of higher education in Kentucky." The amendments explicitly state the statutory requirements and provide more flexibility in the application of tuition setting for the professional schools.

(c) The necessity and function of the proposed administrative regulations is as follows: The Council on Higher Education is empowered and charged with the responsibility, pursuant to KRS 164.020(3), to determine tuition for attendance at public institutions of higher education in the Commonwealth. The statute requires and this state administrative regulation includes consideration of the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions. This administrative regulation sets forth the current tuition policy established by the council.

(d) The benefit expected from the administrative regulations is: Increased flexibility in responding to changes in the program structure of higher education and the assessment of tuition.

(e) The actions resulting from the application of this administrative regulation will be implemented by the Council on Higher Education, the eight public universities and the fourteen community colleges.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary

Date: January 4, 1996

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 22:120**. Comprehensive Employment Manual of the Kentucky Department for the Blind: Business Enterprise Program, 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 March 29, 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 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 February 29, 1996, the public hearing will be canceled.

ADMINISTRATIVE REGISTER - 1525

(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 Department for the Blind: Business Enterprise Program, 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 Department for the Blind: Business Enterprise Program, 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 Department for the Blind: Business Enterprise Program 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 Department for the Blind: Business Enterprise Program 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.

GENERAL GOVERNMENT CABINET Board of Nursing

Date: January 23, 1996
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 March 29, 1996 at 9 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 March 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 would amend the regulation to allow graduates of Kentucky schools to submit verification of completion in a form other than a transcript.

(c) The necessity and function of the proposed administrative regulation is as follows: To expedite the processing of applicants.

(d) The benefits expected from the administrative regulation are: Simpler application requirements for graduates of Kentucky schools.

JUSTICE CABINET Department of Corrections

Date: February 9, 1996
Justice Cabinet
Department of Corrections

ADMINISTRATIVE REGISTER - 1526

- (1) Regulation Number and Title: **500 KAR 6:110**, Medical and health care services.
- (2) The Justice Cabinet, Department of Corrections intends to establish the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 29, 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 March 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
 - (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.
 - (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035, 197.020 and 532.100.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will establish 500 KAR 6:110 as follows: This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control.
 - (c) The necessity and function of the proposed administrative regulation is: To provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.
 - (d) The benefits expected from the administrative regulation are: To provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.
 - (e) The administrative regulation will be implemented as follows: By promulgating and enforcing the components of the various policies to provide consistent policy for the department.

Date: February 9, 1996
Justice Cabinet
Department of Corrections

- (1) Regulation Number and Title: **500 KAR 6:150**, Programs.
- (2) The Justice Cabinet, Department of Corrections intends to establish the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 29, 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 March 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
 - (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.
 - (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035, 197.020 and 532.100.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will establish 500 KAR 6:150 as follows: This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control.
 - (c) The necessity and function of the proposed administrative regulation is: To provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.
 - (d) The benefits expected from the administrative regulation are: To provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.
 - (e) The administrative regulation will be implemented as follows: By promulgating and enforcing the components of the various policies to provide consistent policy for the department.

Date: February 9, 1996
Justice Cabinet

ADMINISTRATIVE REGISTER - 1527

Department of Corrections

(1) Regulation Number and Title: **500 KAR 6:190**, Waiver of compliance.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 29, 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 March 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will establish 500 KAR 6:190 as follows: This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control.

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

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

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

Date: February 9, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **500 KAR 6:200**, Physical plant.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 29, 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 March 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will establish 500 KAR 6:200 as follows: This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control.

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

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

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

ADMINISTRATIVE REGISTER - 1528

Date: February 14, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: use of force, health program, inmate grievance procedure; assessment center operations; inmate conflicts; parole progress reports; referral procedure for inmates adjudicated guilty but mentally ill; inmate furloughs; and community center program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 29, 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 March 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: 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. Use of force (9.1) shall be amended to (a) reflect the correct references, (b) clarify the inclusion of the use of mechanical restraints, (c) clarify the progressive levels of force, and (d) comply with drafting rules in KRS Chapter 13A.

2. Health program audits (13.4).

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

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

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

7. 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.

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

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

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

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

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

Date: February 13, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:030**, Kentucky State Reformatory: visiting regulations; lawn visiting procedure and regulation; violations of law or code of conduct by inmates on parole furlough; parole progress reports.

(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 March 29, 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 March 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: 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

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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 Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

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

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

1. Visiting regulations (16-01-01) shall be amended to show changes in visitor searches; allowable and nonallowable clothing to be worn by inmates and visitors; and clarify picture taking during visits to include inmate and visitor only. Inmate and inmate pictures shall be taken at the gym.

2. Lawn visiting procedure and regulation (16-01-02) shall be amended to reflect starting and ending dates for lawn visits and minor word changes to conform with LRC requirements.

3. Violations of law or code of conduct by inmates on parole furlough (25-00-02) shall be deleted as this procedure is no longer initiated at this institution.

4. Preparole progress report (25-00-03) shall be deleted as it is repetitious of CPP 25.3, Release.

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

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

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

Date: February 13, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary: administrative regulations; execution plan; inmate personal funds; special needs inmates.

(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 March 29, 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 March 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: 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. Administrative regulations (000000-06) shall be deleted due to unnecessary repetition of Kentucky Revised Statutes and Corrections Policy and Procedure.

2. Execution plan (130000-10) shall be deleted because it duplicates Kentucky Revised Statutes and Corrections Policy and Procedure.

3. Inmate personal funds (02-12-01) shall be amended to comply with actual practice.

4. Special needs inmates (10-04-01) shall be amended to comply with actual practice.

(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: February 13, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:060**, Northpoint Training Center: storage of flammable and dangerous chemicals and their use; safety standards; institutional inspections; personal hygiene for inmates, clothing and linens; issuance of personal hygiene products; grooming and hair care standards; emergency medical care plan; emergency and specialized health services; administration and authority for

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health services; assessment and orientation; live work projects in vocational school classes; library services.

(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 March 29, 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 March 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:060, as follows:

1. Storage of flammable and dangerous chemicals and their use (08-05-04) shall be amended to ensure continued compliance with ACA Standards.

2. Safety standards (08-07-01) shall be amended to comply with ACA Standards.

3. Institutional inspections (12-01-01) shall be amended to comply with ACA Standards.

4. Personal hygiene for inmates, clothing and linens (12-02-01) shall be amended to specify the requirement for additional blankets.

5. Issuance of personal hygiene products (12-02-02) shall be amended to delete all time schedules and place them in the inmates activities schedule.

6. Grooming and hair care standards (12-07-01) shall be added to specify the guidelines and regulations for inmate grooming and hair care.

7. Emergency medical care plan (13-01-01) shall be amended to ensure continued compliance with ACA Standards. Minor word changes are also noted.

8. Emergency and specialized health services (13-01-02) shall be amended to ensure continued compliance with ACA Standards. The attachment was also revised to change the telephone number to the current number.

9. Administration and authority for health services (13-02-01) shall be amended to correct minor word changes. Also to ensure compliance with ACA.

10. Assessment and orientation (17-03-01) shall be amended to correct minor word changes. The attachments were changed to represent what is currently in use.

11. Live work projects in vocational school classes (20-02-02) shall be amended to clarify procedures for live work projects.

12. Library services (21-01-01) shall be amended to include special management unit inmates.

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

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

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

Date: February 13, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex: use of physical force: prohibiting of personal abuse and corporal punishment: tool control; personal hygiene for inmates: clothing, linens and shower facilities; room assignments; outgoing inmate packages; classification of inmates to governmental service program; inmate clubs and organizations.

(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 March 29, 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 March 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, 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 Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

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

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

1. Use of physical force: prohibiting of personal abuse and corporal punishment (09-12-01) shall be deleted as this information may be found in CPP's 9.1 and 15.2.

2. Tool control (09-21-01) shall be amended to delete the duplication of material contained in CPP 9.11. Minor word changes throughout to bring policy into compliance with LRC regulations.

3. Personal hygiene for inmates: clothing, linens and shower facilities (12-02-02) shall be amended to reflect the hours daily showers may be taken, A-1 uniform laundry procedures, change in responsibility from supply room supervisor to R & D Officer, minor word changes throughout to bring policy into compliance with LRC regulations.

4. Room assignments (15-02-02) shall be amended to reflect the deletion of work assignment as a criteria for assignment of rooms, and a complex wide seniority list be maintained by the institution.

5. Outgoing inmate packages (16-03-02) shall be amended to reflect the change in procedures of mailing out inmate packages, to add CPP 16.4 as a reference and packages be approved by the Recreation Department for Arts and Crafts.

6. Classification of inmates to governmental service program (19-02-01) shall be amended to reflect minor word changes throughout to bring policy into compliance with LRC regulations.

7. Inmate clubs and organizations (22-04-02) shall be amended to reflect the deletion of specifying names of inmate clubs, the change in procedures to hold special events, and guest list submitted to warden for approval.

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

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

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

Date: February 13, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:170**, Green River Correctional Complex: clothing, bedding, hygiene supplies and barber services; organization of medical services; medical services: sick call, physician's clinics and pill call; medical services co-payment; use of pharmaceutical products; health records; psychological and psychiatric reports; management of serious and infectious diseases; inmate visiting; inmate packages; GRCC inmate property control; GRCC inmate receiving and orientation process; procedure for sending televisions to outside dealer for repair; meritorious visitation program; death or hospitalization of an inmate's family member and notification of inmates; prerelease program; smoking: GRCC facility; information system; inmate correspondence and privilege mail; inmate telephone communications; inmate classification; inmate work program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 29, 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 March 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: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. Clothing, bedding, hygiene supplies and barber services (12-01-01) shall be established to outline the guidelines for providing clothing, bedding, hygiene supplies and barber services to the inmates at the Green River Correctional Complex.

2. Organization of Medical Services (13-01-01) shall be established to outline the organization of the Medical Services at the Green River Correctional Complex.

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3. Medical services: sick call, physician's clinics and pill call (13-02-01) shall be established to outline the guidelines for medical services such as pill call, sick call, and physician's clinic for the inmates at the Green River Correctional Complex.
 4. Medical services copayment (13-02-02) shall be established to outline the guidelines for the collection and processing of the medical services copayment which may be charged to the inmates at the Green River Correctional Complex for nonemergency medical visits initiated by the inmates.
 5. Use of pharmaceutical products (13-03-01) shall be established to outline the administration of medicine and the pharmacy services at the Green River Correctional Complex.
 6. Health records (13-04-01) shall be established to outline the guidelines for the health records maintained at the Green River Correctional Complex.
 7. Psychological and psychiatric reports (13-04-02) shall be established to provide guidelines for access to psychological and psychiatric reports of inmates at the Green River Correctional Complex.
 8. Management of serious and infectious diseases (13-05-01) shall be established to outline the precautionary guidelines to manage serious and infectious diseases at the Green River Correctional Complex.
 9. Inmate visiting (16-01-01) shall be established to outline the inmate visiting program at the Green River Correctional Complex.
 10. Inmate packages (16-04-01) shall be established to outline the guidelines for the receipt and control of incoming and outgoing inmate packages at the Green River Correctional Complex.
 11. GRCC inmate property control (17-01-01) shall be established to outline the guidelines for the institution to manage the quantity and volume of inmate personal and legal property at the Green River Correctional Complex.
 12. GRCC inmate receiving and orientation process (17-02-01) shall be established to outline guidelines for the inmate receiving and orientation process at the Green River Correctional Complex.
 13. Procedure for sending televisions to outside dealer for repair (17-03-01) shall be established to outline the guidelines for inmates at the Green River Correctional Complex to send their televisions to an outside dealer for repair.
 14. Meritorious visitation program (18-02-02) shall be established to outline the guidelines for the meritorious visitation program for inmates at the Green River Correctional Complex.
 15. Death or hospitalization of an inmate's family member and notification of inmates (23-02-01) shall be established to outline the guidelines for the notification of an inmate at the Green River Correctional Complex regarding a death or hospitalization of a family member.
 16. Prerelease program (25-01-01) shall be established to outline the guidelines to provide the inmates at the Green River Correctional Complex the opportunity to participate in a release preparation program prior to their release into the community.
 17. Smoking: GRCC facility (01-10-01) shall be amended to change one of the designated smoking areas at the Green River Correctional Complex.
 18. Information system (05-01-01) shall be amended to add additional information that may be accessed through the KIMS System at the Green River Correctional Complex.
 19. Inmate correspondence and privilege mail (16-02-01) shall be amended to comply with the current operating procedures regarding inmate telephone communications at the Green River Correctional Complex.
 20. Inmate telephone communications (16-03-01) shall be amended to comply with the current operating procedures regarding inmate telephone communications at the Green River Correctional Complex.
 21. Inmate classification (18-01-01) shall be amended to comply with the current operating procedures regarding inmate classification at the Green River Correctional Complex.
 22. Inmate work program (19-01-01) shall be revised to comply with the current operating procedures regarding the Inmate Work Program at the Green River Correctional Complex.
- (c) The necessity and function of the proposed administrative regulation is: To update operating procedures at the Green River Correctional Complex to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.
- (d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.
- (e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

KENTUCKY BOARD OF EDUCATION

Date: January 1, 1996

Kentucky Board of Education

- (1) **702 KAR 3:041**, repeal of 702 KAR 3:040, Check issuing policy.
- (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 March 29, 1996, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
 - (b) If five persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be 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 March 29, 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, General Counsel, Office of Legal Services, Kentucky Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
 - (b) On a request for a public hearing, a person shall state:

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to repeal 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 repealing an existing administrative regulation relating to issuance of checks by local school districts.

(b) The administrative regulation that the Department of Education intends to repeal is 702 KAR 3:040.

(c) The necessity and function for repealing this administrative regulation is to eliminate excessive paperwork.

(d) The benefit expected from repeal of this administrative regulation is to eliminate paperwork and duplication for both the local school districts and the Kentucky Board of Education.

(e) The administrative regulation will be implemented as follows: A notice of repeal will be forwarded to all local district superintendents and finance officers.

Date: February 8, 1996

Kentucky Board of Education

(1) **702 KAR 5:080**, Bus drivers' qualifications; responsibilities.

(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 March 29, 1996, 10 a.m., at the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (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 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 March 29, 1996, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort Kentucky 40601.

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky 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 existing administrative regulation relating to the compliance of an alcohol and controlled substance testing policy which is federally mandated in 49 CFR, Part 40 and 49 CFR, Part 382, is provided in KRS 156.070 and 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 5:080.

(c) The necessity and function of the amendment to the existing administrative regulation is to ensure full compliance with the federal regulations.

(d) The benefits expected from this amended administrative regulation are to produce a clearer understanding of what is expected for the preemployment testing of bus drivers.

(e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation and the revised KDE - Alcohol and Controlled Substances Policy, which is incorporated by reference in the regulation, will be disseminated to all Kentucky school district Transportation Directors.

Date: January 17, 1996

Kentucky Board of Education

Office of Instruction

(1) **704 KAR 3:340**, Commonwealth Diploma Program, proposed amendment. This administrative regulation is necessary to broaden the criteria by which high school students may participate in the Commonwealth Diploma Program.

(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 amended administrative regulation has been scheduled for March 29, 1996, at 10 a.m. in the first floor conference room, 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 March 29, 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, Office of Legal Services, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, 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 amend 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 Department of Education at the address listed above.
- (7) Information relating to the proposed amendment to an administrative regulation.
- (a) The statutory authority for the amendment of an administrative regulation relating to the Commonwealth Diploma Program is contained in KRS 156.070 and 156.160.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is an existing administrative regulation.
- (c) The necessity and function of the existing administrative regulation is to encourage high academic achievement in Kentucky high schools.
- (d) The benefits expected from the administrative regulation are to increase the options by which students can achieve the Commonwealth diploma, thereby encouraging greater participation.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

Date: February 6, 1996
Cabinet for Workforce Development
Department of Vocational Rehabilitation

- (1) Regulation Number and Title: **781 KAR 1:030**, Order of section economic needs test.
- (2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation 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 March 29, 1996 at 10 a.m., in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 - 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 March 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: Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 - 1. "I agree to attend the public hearing."; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Vocational Rehabilitation at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.
 - (b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:030 as follows: Section 2 is being revised to include services previously exempt from the economic needs test imposed by the department as a condition for providing services.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Federal regulations applicable to the vocational rehabilitation program permit states to consider the financial need of applicants or eligible individuals for purposes of determining the extent of their participation in the costs of certain rehabilitation services. The needs test will be extended to tuition and initial registration fees, rehabilitation technology, interpreter services for the deaf, reader services for the blind, personal assistance services, tutors, notetakers, and assistive technology educational aides, and other training including driver training, on-the-job training, job coaching, job development and training.
 - (d) The benefits expected from administrative regulation are: Affected applicants and eligible individuals who are financially able will be expected to participate to the extent possible in the cost of services. Any savings will be used to provide client services over a larger population of otherwise eligible individuals. However, the financial needs test is not so high as to deny any applicant or eligible individual a necessary service.
 - (e) The administrative regulation will be implemented as follows: The financial needs test is currently in effect for a number of other vocational rehabilitation services. Applicants and eligible individuals will be advised of the financial needs test if the affected service is requested. Any applicant or eligible individual who is dissatisfied may request an administrative review or fair hearing pursuant to 781 KAR 1:010.

Date: February 6, 1996
Cabinet for Workforce Development
Department of Vocational Rehabilitation

- (1) Regulation Number and Title: **781 KAR 1:040**.
- (2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation 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 March 29, 1996, at 10 a.m. Eastern time, in the DVR Training Room, 209 Saint Clair 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 March 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: Department of Vocational

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Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:040 as follows: The department will establish parameters governing the circumstances under which second time upgrades to computers will be allowed. In addition, provision of second time modifications to vehicles will be time limited based on the US Internal Revenue depreciation schedule for vehicles.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation prescribes when, and under what conditions, rehabilitation technology services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

(d) The benefits expected from administrative regulation are: Eligible individuals will be able to access, within reasonable parameters, rehabilitation technology needed to achieve an employment outcome.

(e) The administrative regulation will be implemented as follows: Individuals will be advised of the time limitations for second time computer upgrades or vehicle modifications at the time of purchase of the initial modification or upgrade. The department approved receipt for equipment will list the schedule of depreciation. Individuals will be advised that second time upgrades or modifications will be approved only if the original upgrade or modification is adequately maintained in order to meet the schedule of depreciation.

Date: February 6, 1996

Cabinet for Workforce Development
Department of Vocational Rehabilitation

(1) Regulation Number and Title: **781 KAR 1:070, Fees for service.**

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation 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 March 29, 1996, at 10 a.m., in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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 March 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: Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:070 as follows: The Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) plans to extend the number and type of services available to other agencies. The fee schedule is being revised to reflect the cost of available services.

(c) The necessity and function of the proposed administrative regulation is as follows: Federal law allows the expenditure of Title I funds for eligible individuals only. The CDPCRC can make needed services available to other agencies only on a fee for service basis. KRS Chapter 13A requires that those fees be promulgated by administrative regulation.

(d) The benefits expected from administrative regulation are: Administrative cost the department associated with the operation of CDPCRC will be reduced. Other agencies will have access to needed services on a fee schedule basis.

(e) The administrative regulation will be implemented as follows: Agencies (Medicare, medical, veterans administration, etc.) wishing to access services available at CDPCRC will be advised of the fee schedule and any subsequent revisions. Agencies will identify recipients in need of services and refer them to CDPCRC. After services are completed, the referring agency will receive reports with an itemized statement.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

Date: February 15, 1996

Labor Cabinet
Department of Workplace Standards

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Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:320**. Air contaminants.

(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 March 26, 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 and agreement to attend the public hearing are not received at least 20 days prior to March 26, 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, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: The revisions to 29 CFR Part 1910.1001, "Occupational Exposure to Asbestos," as published in the Federal Register, on June 29, 1995 will be incorporated by reference. In addition, the amendments to 29 CFR Parts 1910.1025, "Occupational Exposure to Lead," as published in the Federal Register, on October 11, 1995, are also to be incorporated by reference. Also, several "housekeeping" changes are to be made correcting typing and numbering errors.

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

(d) The benefits expected from the proposed administrative regulation are: Compliance with these proposed amendments will further reduce a significant health risk for Kentucky general industry employees with occupational exposure to asbestos and lead.

(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: February 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 26, 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 and agreement to attend the public hearing, are not received at least 20 days prior to March 26, 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, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:425, as follows: The amendments to 29 CFR Part 1926.1101, "Occupational Exposure to Asbestos," as published in the Federal Register, on June 29, 1995, July 13, 1995, and September 29, 1995, will be incorporated by reference. In addition, changes are to be made to reflect KRS Chapter 13A considerations.

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

(d) The benefits expected from the proposed administrative regulation are: Compliance with these proposed amendments will further

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reduce a significant health risk for Kentucky general industry employees with occupational exposure to asbestos and lead.

(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: February 15, 1996

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:500**. Maritime employment.

(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 March 26, 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 March 26, 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, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:500, as follows: The amendments to 29 CFR 1915.12, 1915.14, and 1915.15, dealing with "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment," as published in the Federal Register, Volume 60, Number 51, March 16, 1995, will be incorporated by reference. The change clarifies ventilation and "hot work" requirements in confined and enclosed spaces and other dangerous atmospheres in maritime employment. The amendments to 29 CFR 1915.1001 dealing with "Asbestos" as published in the Federal Registers, Volume 60, Number 125, June 29, 1995, Volume 60, Number 134, July 13, 1995, and Volume 60, Number 189, September 29, 1995, will be incorporated by reference. The change amends requirements for working with certain types of asbestos containing material and clarifies technical and typographical errors.

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

(d) The benefits expected from the proposed administrative regulation are: Compliance with this proposed amendment would reduce significant risk in confined and enclosed spaces and other dangerous atmosphere work in the shipyard industry in the public sector. Compliance with this proposed amendment will extend the protection afforded by previous rules to employees entering any confined or enclosed space or working in any other dangerous atmosphere in or out of a shipyard. The proposed asbestos amendment allows employers in the public sector to use alternative methods of compliance which will ease the compliance burden on the employer without negatively affecting employee safety and health.

(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 PROTECTION AND REGULATION CABINET Department of Mines and Minerals

Date: February 7, 1996

Cabinet for Public Protection and Regulation

Department of Mines and Minerals

805 KAR 5:070. Minimum requirements for roof support and the roof control plan approval process.

(1) The subject matter of the proposed administrative regulation is the establishment of minimum requirements for roof support in underground coal mines and the roof control plan approval process.

(2) The Department of Mines and Minerals 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 Thursday, March 28, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky.

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

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

and

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2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
 - (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to March 28, 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: Department of Mines and Minerals, P.O. Box 14080, Lexington, Kentucky 40512-4080. Agency contact: Eugene D. Attkisson - (606) 246-2026.
 - (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 Mines and Minerals at the address listed above.
 - (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authorities for the promulgation of an administrative regulation relating to the establishment of the minimum requirements for roof support in underground coal mines and the roof control plan approval process are KRS 351.070(13) and 352.201.
 - (b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will not amend an existing regulation. It will create minimum requirements for roof support in underground coal mines and the roof control plan approval process.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 352.201 requires each underground coal mine to formulate and follow an approved roof control plan. The minimum standards of roof support which are required by the department as a part of its roof control plan approval process are not currently set out in statute or administrative regulation. This proposed administrative regulation establishes those minimum standards and addresses the method of mining; roof bolts and accessories; pillar recovery; temporary support; visual examination of the roof, face and ribs; roof rehabilitation; supplementary roof support materials; long wall mining; and the criteria to be considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions; among others.
 - (d) The benefits expected from the promulgation of this administrative regulation are:
 1. The minimum requirements for roof support will be established and made readily available to the coal mining industry;
 2. The department's roof control plan approval process will be more clearly articulated and made readily available to the coal mining industry;
 3. The continuity and efficiency of the department's roof control plan approval process will be improved; and
 4. Voluntary compliance with KRS 352.201 will be enhanced.
 - (e) The administrative regulation will be implemented as follows: In accordance with KRS 352.201, each underground coal mine shall develop and follow a roof control plan, approved by the commissioner or his authorized representative, that is suitable to the prevailing geological conditions and the mining system to be used at the mine. The development of that roof control plan shall be made in compliance with the minimum requirements established by this proposed administrative regulation.
 - (f) Upon the effective date of this administrative regulation, 805 KAR 5:020 shall be repealed.

KENTUCKY PUBLIC SERVICE COMMISSION

Date: February 9, 1996

Kentucky Public Service Commission

- (1) Regulation Number and Title: **807 KAR 5:026**. Gas service; gathering systems.
- (2) The Kentucky Public Service Commission intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 28, 1996, at 10 a.m., Eastern Standard Time, in Hearing Room 2, 677 Comanche Trail, 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 March 28, 1996, 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 gas service from gathering systems is KRS 278.040(3) and 278.485.
 - (b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will amend 807 KAR 5:026, Gas service; gathering systems. Section 1 will be amended to alter some definitions and to delete others in order to clarify terms, delete misnomers, and provide clearer guidance to those who are subject to this regulation. A new Section 1(7) defines "Price Index" in order to clarify the parameters of price increases for affected gas companies which wish to file for rate adjustments pursuant to the proposed tariff method specified by the new Section 9(1)(a). Section 2 will be amended to incorporate by reference the most recent edition of the American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ANSI B31.8). The change will incorporate the 1992, rather than

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the 1982, edition which is currently cited. An addition to Section 3(6) will require every company furnishing service pursuant to KRS 278.485 to ensure that its name appears on its meters. Section 4(5) will be amended to specify that the commission, and not its staff, will have the authority to approve any omission of a drip tank preceding the regulating equipment on the line. Section 6(7) will require steel customer lines that pass through tillable land to be under 24 inches of cover. The current regulation requires 24 inches of cover only where the land is already cultivated. The proposed amendment takes into consideration, for safety's sake, foreseeable cultivation. Safety considerations also mandate deletion of the current Section 6(7)(b) alternative of burying steel lines only 18 inches below ground when they pass through tillable land. Section 6(7) also will be amended to require the same depth of cover for steel pipelines as that required for plastic ones. Section 6(9) will be amended to incorporate by reference the Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings (D-2513-94a), as published by the American Society for Testing and Materials, 1994 edition. The standards of the American Society for Testing and Materials are cited in the current regulation; however, the appropriate material is not currently incorporated by reference. Section 9 is proposed to be extensively revised to prescribe methods by which gas companies furnishing service pursuant to KRS 278.485 may receive commission approval of rates. The regulation currently provides only that: 1) the gas company may charge \$150 for each service tap (Section 9(1)), and 2) the company may charge rates approved by the commission or, if there are none, rates approved by the Federal Energy Regulatory Commission (Section 9(2)). Section 9(1) has been retained except for some unnecessary language, and is renumbered Section 9 (2)(b). However, the Federal Energy Regulatory Commission no longer oversee these rates. The commission therefore proposes to require gas companies furnishing service pursuant to KRS 278.485 to file for rate adjustments in one of the following ways: 1) pursuant to 807 KAR 5:001, Section 10; 2) if the company qualifies, pursuant to the alternative rate adjustment procedure, 807 KAR 5:076; or 3) by means of proposed tariffs. The new Section 9 requires that a proposed tariff must be submitted sixty days prior to its proposed effective date and must propose rates: 1) whose percentage change does not exceed the percentage change in the producer price index-utility natural gas (PPI 05-5) for the most recent twelve month period, and 2) which do not exceed the highest average volumetric rate of a local gas distribution utility approved by the commission and in effect on the date the proposed tariff is filed. Section 9 also provides that the commission shall, upon written request, provide the current percentage change in the price index and the highest prevailing rate of a local gas distribution utility. A new Section 9(4) prescribes the form companies must use to inform "farm tap" customers of proposed tariffs to adjust rates.

(c) The necessity and function of the proposed administrative regulation is as follows: At present, the regulation is seriously outdated. It assumes, for example, that the Federal Energy Regulatory Commission oversees the applicable rates and that the most recent edition of ANSI standards for piping system construction was published in 1982. The current regulation also cites mandatory standards found in extraneous material without incorporating the material by reference. In addition, the terms employed in the current regulation are unnecessarily numerous and confusing. Deleting the terms "service line" and "yard line" streamlines the regulation and renders it more understandable, since the meanings of those terms in the context of this regulation are unclear. The terms "customer line" and "gathering line" are sufficient for purposes of this regulation since they clearly delineate the respective responsibilities of the customer and the company. Other proposed changes will increase the margin of safety in providing gas service. For example, requiring both steel and plastic lines to be buried 24 inches deep if they run through tillable land will lessen the possibility that a serious accident could occur should land through which a line runs comes under cultivation subsequent to installation. Finally, the amendment is necessary because, since the effective date of the Natural Gas Wellhead Decontrol Act of 1989, the Federal Energy Regulatory Commission no longer receives filings the Kentucky commission can use to approve "farm tap" rates. Consequently, the commission proposes alternative methods of acquiring the information necessary to fulfill its statutory duty of reviewing rates to be charged pursuant to KRS 278.485.

(d) The benefits expected from the proposed amendments to the administrative regulation are: The amendments will clarify and simplify the regulation, eliminating redundancy while bringing the regulation into conformity with the drafting rules specified in KRS 13A.222. Standards already incorporated by reference will be updated appropriately, while standards not currently incorporated by reference will be so incorporated, giving those who are subject to the regulation adequate guidance to the material that specifies those standards. The rate adjustment filing alternatives in the revised Section 9 will enable the commission to perform its statutory duty while making due provision for the fact that gas pipeline companies subject to KRS 278.485 are not organized primarily to provide retail service directly to consumers and may not be appropriately staffed to deal with the complexities of traditional ratemaking. While traditional methods will remain open to them, they will also be given the option of applying for rate adjustments by filing proposed tariffs. The margin of safety in supplying gas service will be increased by requiring lines that run through tillable land to be buried 24 inches deep. Requiring each gas company to ensure that its name appears on its meters will enable inspectors immediately to ascertain the identity of the company responsible for the meter being inspected.

(e) The administrative regulation will be implemented as follows: The amended standards and requirements of the regulation will be implemented by the commission as soon as the regulation is effective.

KENTUCKY RACING COMMISSION

Date: January 17, 1996
Public Protection and Regulation
Kentucky Racing Commission

- (1) Regulation Number and Title: **810 KAR 1:026**, Racing associations.
- (2) The Kentucky Racing Commission intends to promulgate 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 March 27, 1996, 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 20 days prior to March 27, 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: Mr. Michael Fulkerson, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.
- (b) On a request for public hearing, a person shall state:

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The Racing Commission has the authority to regulate racing associations through KRS 230.260(1), (3) and 230.215(1), (2).

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:026 by limiting or precluding the use of exculpatory clauses in agreements between tracks and horsemen. A final determination on any amendment or specific language will only be made after two public hearings.

(c) The necessity and function of the proposed administrative regulation is: The use of exculpatory clauses may cause damages to the Kentucky racing industry.

(d) The benefits expected from the amendment to the administrative regulation are: If it is determined that exculpatory clauses harm Kentucky racing, limiting or excluding them will prevent owners and trainers from leaving the Kentucky circuit.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

CABINET FOR HEALTH SERVICES Department for Health Services Division of Environmental Health & Community Safety

Date: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 10:050**. Refuse bin.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 10:050 is KRS 194.050 and 211.090.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 10:050. 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: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Health Systems Development

(1) **902 KAR 13:090**. Disciplinary actions.

(2) Cabinet for Health Services, 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 March

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28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main St., 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 March 28, 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 Health Services, 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 St., 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 Health Services 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 13:090 is KRS 194.50 and 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 13:090. 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 this administrative are: That the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Health Systems Development

(1) **902 KAR 13:120.** Emergency medical technician automatic and semiautomatic defibrillation training program.

(2) Cabinet for Health Services, 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 March 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main St., 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 March 28, 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 Health Services, 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 St., 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 Health Services 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 13:120 is KRS 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 13:120. 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 this administrative are: That the department will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

Date: February 15, 1996

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Cabinet for Health Services
Department for Health Services
Division of Health Systems Development

(1) **902 KAR 13:130.** Emergency medical technician maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion.

(2) Cabinet for Health Services, 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 March 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main St., 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 March 28, 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 Health Services, 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 St., 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 Health Services 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 13:130 is KRS 211.964.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 13:130. 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 this administrative 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: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health & Community Safety

(1) **902 KAR 47:040.** Cellulose installation.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 47:040 is KRS 194.050 and 211.090.
- (b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 47:040. 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: February 15, 1996
Cabinet for Health Services
Department for Health Services
Division of Environmental Health and Community Safety

- (1) **902 KAR 47:050.** Ban of paint, coatings, and certain consumer products containing lead.
- (2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 47:050 is KRS 194.050; 211.090; 211.180; 211.901.
- (b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 47:050. 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: February 15, 1996
Cabinet for Health Services
Department for Health Services
Division of Environmental Health and Community Safety

- (1) **902 KAR 47:060.** Safety of toys and children's products.
- (2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 47:060 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 47:060. 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 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: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 47:070**. Standards for flammable fabrics and flammable fabric products.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 47:070 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 47:070. 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.

Date: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 55:010**. Licensing of manufacturers and wholesalers.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 1996, the public hearing will be cancelled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Health Services, 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 Health Services' 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 55:010 is KRS 194.050; 211.090; 218A.250; HB 799 of the General Assembly.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 55:010. 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: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 55:070.** Storage of controlled substances in an emergency medication kit in certain long-term care facilities.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 55:070 is KRS 194.050; 218A.250.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 55:070. 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.

Date: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health and Community Safety

(1) **902 KAR 100:040.** General provisions for specified licenses.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 100:040 is KRS 194.050; 211.090; 211.844.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 100:040. 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: February 15, 1996

Cabinet for Health Services

Department for Health Services

Division of Environmental Health and Community Safety

(1) 902 KAR 100:170. Proceedings.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 100:170 is KRS 194.050; 211.090; 211.844.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 100:170. 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.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance

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Division of Management and Development

Date: January 15, 1996
Cabinet for Families and Children
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:015**, Supplemental programs for the aged, blind and disabled.
(2) Cabinet for Families and Children, 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 March 28, 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 March 28, 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 Families and Children, 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 Families and Children's 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 State Supplementation Program is KRS 205.245. Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass through the cost of living SSI benefit increases to state supplementation recipients.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:015. The amendment will revise the standard of need for all levels of care for the State Supplementation Program due to the pass through of the 1996 SSI cost of living adjustment. In addition, a provision is added regarding attendance of the basic training workshop to be optional for the three (3) specialized personal care homes participating in the Persons with a Mental Illness or Mental Retardation (MI/MR) Supplement Program.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated increases in the standard of need of the State Supplementation Program due to the pass through of the Supplemental Security Income (SSI) 1996 cost of living adjustment. In addition, the attendance of the basic training workshop shall be optional for the three (3) specialized personal care homes participating in the MI/MR Supplement Program. The basic training workshop is a duplication of training for staff in the three (3) specialized personal care homes.

(d) The benefits expected from administrative regulation are: This administrative regulation will increase the standard of need for all levels of care for the recipients of the State Supplementation Program. In addition, this administrative regulation will allow the attendance of the basic training workshop to be optional for the three (3) specialized personal care homes which participate in the MI/MR Supplement Program.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

Date: February 15, 1996
Cabinet for Health Services
Department for Medicaid Services

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

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the 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 Health Services' 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 covered medical transportation are KRS 194.050, 42 USC 1396(d), and 42 CFR 440.170.

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

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

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

Date: February 15, 1996

Cabinet for Health Services

Department for Medicaid Services

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

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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 Health Services, 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 Health Services' 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 payment for Medicaid covered medical transportation are KRS 194.050, 42 USC 1396(d), and 42 CFR 440.170 and 42 CFR 447.200 through 447.205.

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

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to the method for determining amounts payable for medical transportation by the Medicaid Program on behalf of both the categorically needy and the medically needy.

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

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Date: February 15, 1996
Cabinet for Health Services
Department for Medicaid Services

(1) **907 KAR 1:450**, Nurse aide training criteria and registry.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services' 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 nurse aide training criteria and registry are KRS 194.050 and 42 USC 1396r.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:450, Nurse aide training criteria and registry as follows: To comply with KRS Chapter 13A drafting requirements; to revise and update the incorporated by reference "Medicaid Service Manual for Nurse Aide Training and Competency Evaluation Program"; and to clarify current program policy.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

(d) The benefits expected from administrative regulation are: To keep the administrative regulation and the incorporated by reference manual current and in compliance with all regulatory requirements.

Date: February 15, 1996
Cabinet for Health Services
Department for Medicaid Services

(1) **907 KAR 1:672**, Provider enrollment, disclosure and documentation for Medicaid participation.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services' 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 enrollment are KRS 194.050; 42

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USC 1396a, b, c, and Executive Order 95-79.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation concerning provider enrollment, disclosure, and documentation for Medicaid participation. This subject matter was previously contained in 907 KAR 1:671.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to Medicaid provider enrollment, disclosure, and documentation requirements.

(d) The benefits expected from administrative regulation are: The dividing of 907 KAR 1:671 into individual subject matter regulations should clarify agency policy and promote ease in the use of the material.

Date: February 15, 1996
Cabinet for Health Services
Department for Medicaid Services

(1) **907 KAR 1:673**, Claims processing.

(2) Cabinet for Health Services, 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 March 28, 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 March 28, 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., Acting General Counsel, Cabinet for Health Services, 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 Health Services' 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 claims processing are KRS 194.050, 42 CFR 447.45; 42 USC 1396a, b, c.; and Executive Order 95-79.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation concerning Medicaid provider claims processing. This subject matter was previously contained in 907 KAR 1:671.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to Medicaid provider claims processing requirements.

(d) The benefits expected from administrative regulation are: The dividing of 907 KAR 1:671 into individual subject matter regulations should clarify agency policy and promote ease in the use of the material.

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

Date: February 15, 1996
Cabinet For Health Services
Department for Mental Health and Mental Retardation Services

(1) **908 KAR 1:340**. Narcotic treatment programs.

(2) The Department for Mental Health and Mental Retardation Services intends to promulgate administrative regulation governing narcotic treatment programs in Kentucky.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation will be held for March 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to March 28, 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 Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 194.050, 222.231, and 21 CFR Part 291.

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

(c) The necessity and function of this proposed regulation is as follows: KRS 194.050 and 222.231 authorizes the Cabinet for Health Services to establish guidelines and provide for the systematic evaluation of effectiveness of narcotic treatment programs. This administrative regulation establishes the State Narcotic Authority with the Director of Substance Abuse Services, within the Department for Mental Health and Mental Retardation Services. The State Narcotic Authority has established an alternative distribution system for narcotic treatment programs.

(d) The benefits expected from this administrative regulation is to establish greater consistency in program operation policies across narcotic treatment programs. This administrative regulation outlines specific program policy requirements that shall be common across all such programs in the areas of licensing of narcotic treatment programs, admissions, readmissions, treatment phases, program infractions, program transfers, medications fees, mechanism for client appeal, and procedures for seeking waivers from regulatory requirements.

(e) This administrative regulation will be implemented as follows: By the Division of Substance Abuse, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services in accordance with KRS 194.050, 222.231, and 21 CFR Part 291.

Date: February 15, 1996

Cabinet for Health Services

Department for Mental Health and Mental Retardation Services

(1) **908 KAR 2:080.** Quality assurance standards for supported living services.

(2) The Department for Mental Health and Mental Retardation Services 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 March 28, 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, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to March 28, 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 Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to supported living services is KRS 210.770 to 210.795.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 2:080. It will revise 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: To monitor the quality of service delivery of supported living services by establishing monitoring standards.

(d) The benefits expected from the administrative regulation are: To bring the Cabinet for Health Services into compliance with the requirements of KRS Chapter 13B regarding administrative hearings.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by the Department for Mental

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Health and Mental Retardation Services and the State Supported Living Council.

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 22:120E

200 KAR 22:120E 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 regulation promulgates the comprehensive employment manual of the Kentucky Department for the Blind: Business Enterprise Program, 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 and 1998 Regular Sessions of the Kentucky General Assembly. Therefore, this administrative regulation should be approved on an emergency basis so that the Pilot Personnel Program of the Kentucky Department for the Blind: Business Enterprise Program can be implemented without delay. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JOHN P. MCCARTY, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 22:120E. Comprehensive Employment Manual of the Kentucky Department for the Blind: Business Enterprise Program for use in the Pilot Personnel Program.

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

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

Section 1. Comprehensive Employment Manual. The Kentucky Department for the Blind: Business Enterprise Program has been approved to participate in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450. Implementation of the Pilot Personnel Program for the Kentucky Department for the Blind: Business Enterprise Program shall comply with the "Employee Handbook For Kentucky Department for the Blind: Business Enterprise Program".

Section 2. Incorporation by Reference. (1) The "Employee Handbook For Kentucky Department for the Blind: Business Enterprise Program" revised November 1995, is incorporated by reference.

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

JOHN P. MCCARTY, Secretary

APPROVED BY AGENCY: January 11, 1996

FILED WITH LRC: January 12, 1996 at 1 p.m.

Contact Person: Gail Prewitt, Assistant Director, Governmental Services Center, Academic Services Building, Kentucky State University, Frankfort, Kentucky 40601, (502) 564-8170.

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 Department for the Blind: Business Enterprise Program 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 Department for the Blind: Business Enterprise Program 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

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Secretary of the Finance and Administration Cabinet. Once the employment manuals are promulgated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Finance and Administration Cabinet and the pilot agencies will be required to absorb the costs of maintaining a file of employment manuals.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict with, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation only applies to employees in the Kentucky Department for the Blind: Business Enterprise Program who are participating in the Pilot Personnel Program.

STATEMENT OF EMERGENCY 201 KAR 20:070E

This emergency administrative regulation would allow schools of nursing in Kentucky to submit lists of graduates in lieu of transcripts to comply with a requirement for licensure. This would greatly simplify the process and would save the Kentucky graduates time and money. In order to allow 1996 graduates to utilize this procedure an emergency administrative regulation is necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 10, 1996. (Compiler's note: The ordinary administrative regulation that was filed on January 10, 1996, has been withdrawn. The ordinary administrative regulation to replace this emergency administrative regulation has not yet been filed.)

PAUL E. PATTON, Governor

MELDA SUE LOGAN, President

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing

201 KAR 20:070E. Licensure by examination.

RELATES TO: KRS 314.041(1), 314.051(1)

STATUTORY AUTHORITY: KRS 314.131(1)

EFFECTIVE: January 25, 1996

NECESSITY AND FUNCTION: To assure that applicants for licensure by examination meet minimum standards set forth by the board as necessary for safe practice. To provide some security in the examination process.

Section 1. Eligibility for Licensure by Examination. To be eligible for licensure by examination, applicants shall:

(1) Hold a high school diploma or equivalent.

(2) Have completed an approved program of practical nursing for licensed practical nurse licensure or an approved program of registered nursing for registered nurse licensure.

(3) For graduates of Kentucky programs of nursing, have the nursing program submit verification that the applicant has completed the program of nursing and has successfully completed all requirements for a degree, diploma or certificate therefrom, on a form prescribed by the board. For graduates of programs of nursing outside Kentucky, submit an official transcript of nursing program.

(4) Submit a properly executed application for licensure; current application for licensure fee; and one (1) passport type photograph (two (2) x three (3) inches) taken within the past six (6) months with the photographs signed and dated by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program (if graduated therefrom) on the back of the photographs. Snapshots are not acceptable.

(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation.

(6) Notify the board in writing as soon as any new address is established after submitting the application.

(7) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(8) Abide by and cooperate with security procedures established by the board, when taking the examination.

(9) Apply to take and pass the national council licensure examination or its equivalent.

(10) Pay all necessary fees for application for licensure as stated in this section and, if applicable, Sections 2 and 4 of this administrative regulation.

(11) Meet the requirement of 902 KAR 2:150.

(12) An application for licensure is valid for a period of one (1) year from date the applicant is declared eligible to take the examination.

Section 2. Graduates of Foreign Nursing Schools. (1) To be eligible for application for licensure by examination, graduates of foreign nursing schools shall submit evidence of the following:

(a) Certificate showing successful completion of commission on graduates of foreign nursing schools examinations (registered nurse applicants only). This requirement shall not apply to the following:

1. An applicant who is licensed as a registered nurse in a United States jurisdiction;

2. An applicant who has received a graduate degree in nursing from a university or college in the United States; or

3. A graduate of a program of nursing in Canada.

(b) If licensed in another United States jurisdiction or country, verification of licensure as a nurse with a statement from the licensing authority that the license is in good standing and has not been revoked, suspended, probated, or otherwise disciplined in that country

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and that no such action is currently pending.

(c) Legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor.

(2) Applicants for licensure by examination shall meet requirements as stated in Section 1 of this administrative regulation.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Licensing Examination Standards. (1) The applicant shall pass the national council licensure examination or an examination acceptable to the board.

(2) An applicant who has taken any examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that such examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) The examination is available to the board in the English language;

(c) The examination test plan blueprint is available for board review and identifies, to the satisfaction of the board, test content and content weightings;

(d) Test items are available for board review and demonstrate to the satisfaction of the board the testing of competency necessary for safe practice;

(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(f) The examination is revised after each administration to insure currency and security of content;

(g) The examination is given under strict security measures;

Section 4. Retaking the Examination. (1) Examination candidates who fail to achieve a passing result may retake the examination after meeting the requirements as stated in Section 1 of this administrative regulation and, if applicable, Section 2 of this administrative regulation, and after submission of:

(a) The retake application; and

(b) The applicable fee.

(2) The examination may be retaken no more often than once every three (3) months from the date the last examination was taken by the applicant.

Section 5. Release of Examination Scores. The board shall not release examination numerical results to any individual or agency without written authorization from the applicant or licensee except as follows:

(1) The candidate;

(2) Other state boards of nursing;

(3) National Council of State Boards of Nursing Inc.

MELDA S. LOGAN, President

APPROVED BY AGENCY: January 24, 1996

FILED WITH LRC: January 25, 1996 at 10 a.m.

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

(1) Type and number of entities affected: RN and LPN applicants.

The number varies from year to 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: N/A

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

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

1. First year following implementation: Simpler reporting requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The amendment would cut down on paperwork requirements for graduates of Kentucky schools.

(4) Assessment of anticipated effect on state and local revenues: N/A

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

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

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

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The method chosen was the simplest and the most effective.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? N/A

STATEMENT OF EMERGENCY

500 KAR 6:110E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the affected administrative regulation must be revised immediately due to the increasing need to house juvenile offenders in safe and secure facilities which will directly stop the imminent threat to the public's safety and welfare from violent juvenile offenders. This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control. This emergency administrative regulation shall be replaced by the ordinary administrative regulation filed with LRC on March 15, 1996 in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor

JACK C. LEWIS, Commissioner

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JUSTICE CABINET Department of Corrections Juvenile Detention Facilities

500 KAR 6:110E. Medical and health care services.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.160, 15A.210

EFFECTIVE: February 14, 1996

NECESSITY AND FUNCTION: KRS 15A.210 mandates that the Justice Cabinet issue administrative regulations governing juvenile detention centers.

Section 1. (1) Medical, including but not limited to, emergency psychiatric, and dental matters involving medical judgment shall be the sole province of the responsible physician and dentist, respectively. Security regulations that are applicable to the facility personnel shall also apply to health personnel.

(2) The facility shall adopt and enforce written policies and procedures which:

(a) Require a quarterly report on the health delivery system and health environment and an annual statistical summary;

(b) Specify the provision of emergency mental health services for juveniles in need of such services, including, but not limited to, services provided by qualified mental health professionals who meet educational and licensure or certification criteria specified by their respective professional disciplines, such as psychiatry, psychology, psychiatric nursing and social work;

(c) Govern the relationship between the responsible physician and physicians in private practice working in the facility;

(d) Require that first aid kits shall be available. The responsible physician shall approve the contents, number, location and procedure for periodic inspection of the kits;

(e) Provide for medical examination of any employee or juvenile suspected of a communicable disease;

(f) Require medical screening to be performed by health-trained staff or qualified health care personnel on all juveniles, including intrasystem transfers, upon arrival at the facility; all findings shall be recorded on a printed screening form approved by the Justice Cabinet;

(g) Require that a health appraisal for each juvenile, excluding intrasystem transfers, is completed within seven (7) days after arrival at the facility. In the case of a juvenile who has documented evidence a health appraisal is not required except as determined by the designated health authority;

(h) Ensure that juveniles shall be informed orally and in writing of the procedures required for gaining access to medical services;

(i) Provide for the prompt notification of juveniles' parents or guardians and the responsible agency in case of serious illness, surgery, injury or death;

(j) Provide that child care staff and other personnel are trained to respond to health-related situations within a four (4) minute response time. A training program shall be established by the responsible health authority in cooperation with the facility administrator, which includes the following:

1. Recognition of signs and symptoms, and knowledge of action required in potential emergency situations;

2. Administration of first aid and cardiopulmonary resuscitation (CPR);

3. Methods of obtaining assistance;

4. Signs and symptoms of mental illness, retardation and chemical dependency; and

5. Procedures for patient transfers to appropriate medical facilities or health care providers;

(k) Provide that emergency dental care is made available to each juvenile under the direction and supervision of a dentist licensed in the state;

(k) Provide for screening, and/or referral for care for mentally ill or retarded juveniles. The responsible physician shall have designated, in advance, specific referral sources;

(l) Ensure a special program for juveniles requiring close medical supervision. A physician shall develop a written medical treatment plan for each of these patients that includes directions to medical and nonmedical personnel regarding their roles in the care and supervision of these patients;

(m) Provide that juveniles in need of detoxification for chemical impairment shall not be admitted to the facility, but shall be referred for appropriate medical care;

(n) Provide for the proper management of pharmaceuticals and address the following subjects:

1. A formulary specifically developed for the facility;

2. Prescription practices that require that:

a. Psychotropic medications are prescribed only when clinically indicated as one (1) facet of a program of therapy;

b. "Stop order" time periods shall be required for all medications; and

c. The prescribing provider reevaluates a prescription before its renewal;

3. Dispensing of medicine in conformance with appropriate state and federal law;

4. Administration of medication, which shall be carried out by persons properly trained and under the supervision of the health authority and facility administrator or designee;

5. Accountability for administering or distributing medications in a timely manner, according to physician orders;

6. Procedures for medication receipt, storage, dispensing and administration or distribution;

7. Maximum security storage and periodic inventory of all controlled substances, syringes and needles;

(o) Uphold the principle of confidentiality of the health record and support these requirements:

1. The active health record shall be maintained separately from the confinement record;

2. Access to the health record shall be controlled by the health authority; and

3. The health authority shall share with the facility administrator information regarding a juvenile's medical management, security and ability to participate in programs;

(p) Provide that when a juvenile is in need of hospitalization, a staff member or a designee approved by the court accompanies him and stays with the juvenile at least during admission;

(q) Provide that all informed consent standards in the jurisdiction shall be observed and documented for medical care. The informed consent of parent, guardian or legal custodian applies when required by law. When health care is rendered against the patient's will, it shall be in accord with state and federal laws and regulations.

(3) Written health care policy and procedures shall be approved by the responsible physician or medical administrator.

(4) The specific duties of qualified medical personnel shall be governed by written job descriptions approved by the responsible physician and the facility administrator.

(5) Treatment by health care personnel other than a physician, dentist, psychologist, optometrist, podiatrist or other independent providers shall be performed pursuant to written standing or direct orders given by personnel who are authorized by law to give such orders. Nurse practitioners and physician's assistants may practice within the limits of applicable laws and regulations.

(6) Arrangements shall be made with health care specialists in advance of need.

(7) A written agreement shall exist between the facility administration and a nearby hospital for all medical services which cannot be provided within the facility.

(8) Appropriate state and federal licensure, certification or registration requirements and restrictions apply to personnel who

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provide health care services to juveniles. Verification of current credentials and job descriptions shall be [are] on file in the facility.

(9) If medical services are delivered in the facility or through contract services, adequate space, equipment, supplies and materials, as determined by the responsible physician, shall be provided for the performance of primary health care delivery.

(10) Program staff shall be informed of juveniles' special medical problems. At the time of admission, staff shall be informed of any physical problems that might require medical attention.

(11) The facility shall adopt and enforce written policy and procedure for the collection and recording of health appraisal data which requires that:

(a) The process shall be [is] completed in a uniform manner as determined by the health authority;

(b) Health history and vital signs shall be [are] collected by health-trained or qualified health personnel; and

(c) Collection of all other health appraisal data shall be [is] performed only by qualified health personnel.

(12) Juveniles' medical complaints shall be monitored and responded to by medically trained personnel.

(13) Sick call for nonemergency medical service, conducted by a physician [and] other qualified medical personnel, shall be [is] available to each juvenile at least once per week.

(14) When sick call is not conducted by a physician, a physician shall be available once each week to respond to juvenile complaints regarding service they did or did not receive from other health personnel.

(15) The facility administration shall provide access to twenty-four (24) hour emergency medical and dental care as outlined in a written plan which includes:

(a) Arrangements for the emergency evacuation of the juvenile from the facility;

(b) Arrangements for the use of an emergency medical vehicle;

(c) Arrangements for the use of one (1) or more designated hospital emergency rooms or other appropriate health facilities; and

(d) Arrangements for emergency on-call physician and dental services when the emergency health facility is not located in a nearby community.

(16) Medical maintenance shall be provided to juveniles of the facility when medically indicated by written medical order.

(17) The person administering medications shall have received training from a responsible physician and the official responsible for the facility, shall be accountable for administering medications according to orders, and shall record the administration of medications in a manner and on a form approved by a responsible physician.

(18) Stimulants, tranquilizers and psychotropic drugs requiring intramuscular administration shall be prescribed only by a physician, following a physical examination of the juvenile by the physician, and shall be administered by a physician or registered nurse. Drugs and medications that would usually be administered by parents may be administered to juveniles by facility staff pursuant to a physician's prescription; such drugs may include stimulants, tranquilizers, and psychotropics.

(19) Under no circumstances shall a stimulant, tranquilizer or psychotropic drug be administered for purposes of program management and control, or for purposes of experimentation and research.

(20) The facility shall have a written policy involving the location of the health record file. The health record file shall contain the following:

- (a) The completed receiving screening form;
- (b) Health appraisal data forms;
- (c) All findings, diagnoses, treatments, disposition;
- (d) Prescribed medications and their administration;
- (e) Laboratory, x-ray and diagnostic studies;
- (f) Signature and title of documentor;
- (g) Consent and refusal forms;
- (h) Release of information forms;

(i) Place, date and time of health encounters;

(j) Health service reports, e.g., dental, mental health and consultations;

(k) Treatment plan, including nursing care plan;

(l) Progress reports; and

(m) Discharge summary of hospitalization and other termination summaries.

The method of recording entries in the records, the form and format of the records, and the procedures for their maintenance and safekeeping shall be approved by the Justice Cabinet.

(21) Programs and training shall be provided for the development of sound habits and practices regarding personal hygiene.

(22) For juveniles being transferred to other facilities, summaries or copies of the medical history record shall be [are] forwarded to the receiving facility prior to or at arrival.

(23) Written policy shall prohibit the use of juveniles for medical, pharmaceutical or cosmetic experiments. This policy shall not preclude individual treatment of a juvenile based on his need for a specific medical procedure that is not generally available.

(24) The facility may seek reimbursement for medical care from the parent, person exercising similar custodial control, the state or any other party who may be financially responsible.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 14, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: Three secure detention facilities with one additional facility under construction.

(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: Local revenues may increase as more beds become available.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY 500 KAR 6:150E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the affected administrative regulation must be revised immediately due to the increasing need to house juvenile offenders in safe and secure facilities which will directly stop the imminent threat to the public's safety and welfare from violent juvenile offenders. This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control. This emergency administrative regulation shall be replaced by the ordinary administrative regulation filed with LRC on March 15, 1996 in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
JACK C. LEWIS, Commissioner

JUSTICE CABINET Department of Corrections Juvenile Detention Facilities

500 KAR 6:150E. Programs.

RELATES TO: KRS 15A.210

STATUTORY AUTHORITY: KRS 15A.160, 15A.210

EFFECTIVE: February 14, 1996

NECESSITY AND FUNCTION: KRS 15A.210 mandates that the Justice Cabinet issue administrative regulations governing juvenile detention centers.

Section 1. (1) The facility shall provide or make available the following minimum services and programs consistent with federal law to adjudicated and preadjudicated juveniles:

- (a) An education program;
- (b) Visitation with parents, guardians or persons exercising similar custodial control or supervision;
- (c) Private communication with visitors and staff;
- (d) Counseling;
- (e) Continuous supervision of living units;
- (f) Medical services;
- (g) Food services;
- (h) Recreation and exercise; and
- (i) Reading materials.

(2) Programs and services shall be initiated for all juveniles as soon as they are admitted to living units.

(3) Educational opportunities shall be made available to all juveniles within ten (10) days of admission, except when there is substantial evidence to justify otherwise.

(4) Educational programs in detention facilities shall be designed to assist detained juveniles in keeping up with their studies.

(5) Educational supervisors and instructors shall be licensed or approved by the state.

(6) Formal educational programs shall have a minimum of one (1) teacher for every fifteen (15) students per class period.

(7) There shall be an annual evaluation to measure the effectiveness of the educational training programs against stated performance objectives.

(8) The facility shall adopt and enforce written policies and procedures which:

(a) Provide a recreation and leisure-time plan that includes, at a minimum, at least one (1) hour per day of large muscle activity and one (1) hour of structured leisure-time activities;

(b) Provide the opportunities to adhere to the dietary and other requirements of the various faiths when approved by the religious authority; and

(c) Provide that staff members are available to counsel juveniles at their request; provision shall be made for counseling juveniles on an emergency basis.

(9) The facility shall have a staff member or trained volunteer who coordinates and supervises the recreation program.

(10) A variety of fixed and movable equipment shall be provided for each outdoor recreation area.

(11) Library services shall be available to all detained juveniles.

(12) Written policy shall define the principles, purposes and criteria used in the selection and maintenance of library materials.

(13) There shall be a volunteer staff or a contractual social services program that makes available a range of resources to meet the needs of juveniles, including individual and family counseling and community services, as required.

(14) Detained juveniles shall be afforded access to religious, mental health counseling and crisis intervention services in accordance with their needs.

(15) A staff member shall coordinate the facility's religious programs.

(16) There shall be a system for juveniles and staff to communicate with one another at all times.

(17) Work assignments shall not conflict with education programs.

(18) Juveniles shall not be permitted to perform any work prohibited by state and federal regulations and statutes pertaining to child labor.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 14, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: Three secure detention facilities with one additional facility under construction.

(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

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JUSTICE CABINET Department of Corrections Juvenile Detention Facilities

- (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:
Local revenues may increase as more beds become available.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation is: None
 - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect:
N/A
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 - (10) Any additional information or comments: None
 - (11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY 500 KAR 6:190E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the affected administrative regulation must be added immediately due to the increasing need to house juvenile offenders in safe and secure facilities which will directly stop the imminent threat to the public's safety and welfare from violent juvenile offenders. This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control. This emergency administrative regulation shall be replaced by the ordinary administrative regulation filed with LRC on March 15, 1996 in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
JACK C. LEWIS, Commissioner

500 KAR 6:190E. Waiver of compliance.

RELATES TO: KRS 15A.210
STATUTORY AUTHORITY: KRS 15A.160, 15A.210
EFFECTIVE: February 14, 1996
NECESSITY AND FUNCTION: KRS 15A.210 mandates that the Justice Cabinet issue administrative regulations governing juvenile detention centers.

Section 1. (1) The Justice Cabinet may grant a waiver of the rated capacity for an existing facility if the cabinet determines the following:

(a) That strict compliance may cause unreasonable difficulties in securing housing for juvenile offenders.

(b) That a waiver may not seriously affect the security, supervision of juveniles, programs, or the safe, healthful, or efficient operation of the facility.

(2) When a waiver from this standard is desired, the responsible local authority shall submit a written request to the Justice Cabinet. The written request shall include the following information:

(a) Identification and description of the specific problems involved in meeting the capacity requirement.

(b) A description of the capacity change that is needed, including identification of the proposed usage of sleeping and program areas.

(c) A description of the classification to be used, additional staffing alternatives and programming.

(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, shall not jeopardize the security, supervision of juveniles, programs, or the safe, healthful, or efficient operation of the facility.

(3) A waiver, if granted by the Justice Cabinet, shall apply only to the petitioner for the specific period of time specified and shall include any requirements imposed by the cabinet 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.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1996
FILED WITH LRC: February 14, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: Three secure detention facilities with one additional facility under construction.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

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- (b) Reporting and paperwork requirements: Policy revisions.
- (4) Assessment of anticipated effect on state and local revenues: Local revenues may increase as more beds become available.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation is: None
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY 500 KAR 6:200E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the affected administrative regulation must be revised immediately due to the increasing need to house juvenile offenders in safe and secure facilities which will directly stop the imminent threat to the public's safety and welfare from violent juvenile offenders. This administrative regulation will allow juvenile offenders to be double bunked in cells but will maintain sufficient space to comply with humane treatment and control. This emergency administrative regulation shall be replaced by the ordinary administrative regulation filed with LRC on March 15, 1996 in accordance with KRS Chapter 13A.

PAUL E. PATTON, Governor
JACK C. LEWIS, Commissioner

JUSTICE CABINET Department of Corrections Juvenile Detention Facilities

500 KAR 6:200E. Physical plant.

RELATES TO: KRS 15A.210
STATUTORY AUTHORITY: KRS 15A.160, 15A.210
EFFECTIVE: February 14, 1996
NECESSITY AND FUNCTION: KRS 15A.210 mandates that the

Justice Cabinet issue administrative regulations governing juvenile detention centers.

Section 1. (1) The facility shall conform to all applicable zoning ordinances or, through legal means, is attempting to comply with or change such laws, codes or zoning ordinances.

(2) The facility shall conform to all applicable state building codes.

(3) If the facility is on the grounds of any other type of corrections facility, it shall be a separate, self-contained unit.

(4) All secure juvenile detention facilities shall be primarily designed for single cell sleeping areas; multiple occupancy dorms or double occupancy cells shall not exceed twenty (20) percent of the bed capacity of the facility. Cells or sleeping areas shall have thirty-five (35) square feet of unencumbered space. [After July 1, 1988, all new construction of secure juvenile detention facilities, here defined as a separate building and separate staff pursuant to existing statute, are required to construct single cell sleeping quarters in these facilities.]

(5) When the population exceeds the rated capacity, the chief district judge, the district judge with jurisdiction for the juvenile matters, and the county judge executive shall be notified.

(6) The facility shall be utilized so that juveniles can be grouped in accordance with a classification plan.

(7) When seriously ill, mentally disordered, injured or nonambulatory juveniles are held in the facility, there shall be at least one (1) single-occupancy cell or room for them that provides for continuing staff observation.

(8) The facility shall have exits that are properly positioned, clear, and distinctly and permanently marked in order to ensure the timely evacuation of juveniles and staff in the event of fire or other emergency. All housing areas, and places of assembly for fifty (50) or more persons, shall have two (2) exits.

(9) The facility perimeter shall be secured in such a way that juveniles remain within the perimeter and that access by the general public is denied without proper authorization.

(10) The facility shall be operated with day rooms of no more than twenty-five (25) juveniles each. This section applies to facilities in operation before July 1, 1987.

(11) The facility shall have living units of no more than twenty-five (25) juveniles. [All new facilities opened on or after July 1, 1987 shall have living units of no more than twelve (12) juveniles.]

(12) All housing areas shall provide for, at a minimum:

(a) Lighting as determined by the tasks to be performed;

(b) Toilets are provided at a minimum ratio of one (1) for every twelve (12) juveniles in male facilities and one (1) for every eight (8) juveniles in female facilities. Urinals may be substituted for up to one-half (1/2) of the toilets in male facilities. Wash basins shall be provided at a minimum ratio of one (1) basin for every twelve (12) occupants; [One (1) toilet and one (1) wash basin for every five (5) juveniles;]

(c) Showers accessible to juveniles;

(d) A heating and ventilation and acoustical system to ensure healthful and comfortable living and working conditions for juveniles and staff; and

(e) Access to a drinking fountain.

(13) If the facility houses male and female juveniles, space shall be [is] provided for cocorrectional activities.

(14) Space shall be provided for the secure storage of chemical agents, restraining devices and related security equipment, and the equipment shall be located in an area that is readily accessible to authorized persons only.

(15) Water for showers shall be temperature-controlled.

(16) Single sleeping rooms shall have at least seventy (70) square feet of floor space and juveniles shall be provided activities and services outside their rooms at least twelve (12) hours a day.

(17) All sleeping rooms in detention facilities shall have, at a minimum:

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(a) Access to the following approved penal sanitation facilities:

1. Toilet above floor level which is available for use without staff assistance twenty-four (24) hours a day;

2. Wash basin and drinking water;

3. Hot and cold running water;

(b) An approved penal bed at above floor level and storage space; and

(c) Natural light. Facilities existing and operating on July 1, 1987 shall be exempt from the requirement that each sleeping room have natural light.

(18) At least thirty-five (35) square feet of floor space per juvenile shall be provided in the day room on each living unit.

(19) Male and female juveniles shall not occupy the same sleeping room.

(20) Ventilation shall be available in the event of a power failure.

(21) The total indoor activity area outside the sleeping area shall provide space of at least 100 square feet per juvenile.

(22) There shall be at least fifteen (15) square feet of floor space per person for those occupying the dining room or dining area. Meals should be encouraged to be served outside the cells or sleeping areas. [~~There shall be at least fifteen (15) square feet of floor space per person for those occupying the dining room or dining area.~~]

(23) When the facility provides food service, the kitchen shall have at least 200 square feet of floor space.

(24) School classrooms shall be designed in conformity with local or state educational requirements except that all juvenile detention facilities shall be exempt from the requirement to have operable windows for rescue and ventilation.

(25) There shall be a visiting area that allows for privacy during visits.

(26) There shall be a well-drained outdoor recreation area for all new and renovated facilities. All existing facilities shall comply with this administrative regulation by January 1, 1990.

(27) Space shall be available for religious services.

(28) The facility shall have a central medical room with medical examination facilities.

(29) When there is a confinement room separate from the living unit, it shall be equipped with plumbing and security furniture.

(30) There shall be interview space available in or near the living unit.

(31) The office in each housing unit shall have a telephone and enable supervision of the general living area; it shall be used for communications, staff conferences and storage of unit records.

(32) There shall be secure storage space provided for storage of juveniles' property and personal belongings.

(33) There shall be storage rooms for clothing, bedding and facility supplies.

(34) Closets for storage of cleaning supplies and equipment shall be located in each principal area and shall be well ventilated.

(35) Separate and adequate space shall be provided for mechanical equipment.

(36) There shall be a written plan for preventive maintenance of the physical plant with provisions for emergency repairs or replacement of equipment. This plan shall be reviewed annually and updated if needed.

(37) There shall be documentation by an independent, qualified source that the interior finishing material in juvenile living areas, exit areas and places of public assembly are in accordance with recognized national fire safety codes.

(38) The facility shall adopt and enforce written policy and procedure which provide that a new detention facility shall be built or the existing facility expanded only after a needs evaluation study has been prepared by the agency in conjunction with the juvenile court and the Justice Cabinet.

(39) Prior to plans development for newly planned facilities, a written program philosophy shall be developed for the facility, which includes ~~but is not limited to~~:

(a) Statement of general goals and purposes of the facility;

(b) Description of the facility, including statutory authority and services to be provided;

(c) Analysis of projected work load, staffing, programs and operating and capital budgets;

(d) Assessment of the impact of the facility on overall operation of the parent agency;

(e) Justification for the facility;

(f) Analysis of alternative means for achieving the same goals;

(g) Description of space requirements;

(h) Outline of budget and time restrictions; and

(i) Study of alternate ways of satisfying space requirements, including leasing renovation and new construction.

(40) Each living unit shall be designed so that individual rooms, day rooms and program staff offices are in close proximity to juveniles for purposes of communication and interaction.

(41) Disabled [~~Handicapped~~] juveniles shall be housed in a manner that provides for their safety and security. Cells or housing units used by them shall be designed for their use, and provide the maximum possible integration with the general population. Appropriate institution programs and activities shall be accessible to disabled [~~handicapped~~] juveniles confined in the facility.

(42) All parts of the facility that are accessible to the public shall be accessible to and usable by disabled [~~handicapped~~] staff and visitors.

(43) There shall be a day room for each housing unit or detention room cluster. The room shall have a minimum of thirty-five (35) square feet of floor space per juvenile for the maximum number expected to use the day room at one (1) time and shall be separate and distinct from the sleeping area, which is immediately adjacent and accessible. [~~There shall be a day room for each housing unit or detention room cluster. The room shall have a minimum of thirty-five (35) square feet of floor space per juvenile and shall be separate and distinct from the sleeping area, which is immediately adjacent and accessible.~~]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 14, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: Three secure detention facilities with one additional facility under construction.

(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: Local revenues may increase as more beds become available.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY 803 KAR 2:320E

This emergency administrative regulation clarifies definitions in the asbestos regulation for general industry and offers alternative methods of compliance for certain types of asbestos work. This administrative regulation also removes certain obsolete paragraphs of the general industry lead standard and removes stays of enforcement for the brass and bronze ingot manufacturing industry. 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 (1) more stringent, within six (6) 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" is to be filed with the Regulations Compiler on February 15, 1996.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Chairman

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

803 KAR 2:320E. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-.1500
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-.1500

EFFECTIVE: February 15, 1996

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

administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) Definitions for Section 2 of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 mu particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into required areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary or Health, Education and Welfare to act for the director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel= of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(2) Definitions for Section 5 of this administrative regulation. As used in the material incorporated by reference in Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

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(b) "Assistant Secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in paragraph (b)13 of this subsection are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level or protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are release.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. [8-] Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. [9-] Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies

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are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

~~9. [4-]~~ There shall be no connection between regulated areas and any other areas through the ventilation system.

~~10. [4-]~~ A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

~~11. [4-]~~ Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. Where toilets are in regulated areas, such toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT

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AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application for decontamination practices and purposes;

e. The purpose for and significance of emergency practices and procedures;

f. The employees specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first raining and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and inplant location of the area(s) regulated and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the

nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure:

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated are, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee' employment. Upon termination of the employee' employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director: and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees suitability for employment in the specific exposure.

Section 3. Laboratory Activities. (1) The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which chemicals covered by .1103-.1016 are handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(e) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(g) Employees engaged in animal support activities shall be:

1. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and

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shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

4. Required to shower after the last exit of the day.

(h) Employees, other than those engaged only in animal support activities, each day shall be:

1. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(i) Air pressure in laboratory areas and animal rooms where chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(j) There shall be no connection between regulated areas and any other areas through the ventilation system.

(k) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(l) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Table 1 - Implementation Schedule and Glove Requirements. (1)(a) The "Table 1 - Implementation Schedule" in paragraph (b) of this subsection shall apply in lieu of the schedule found in 29 CFR 1019.1025(e)(1)(ii).

(b) "Table 1 - Implementation Schedule":

TABLE 1 - Implementation Schedule

INDUSTRY ¹ ug/m ³	COMPLIANCE DATES		
	200 ug/m ³	100 ug/m ³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture	(2)	N/A	June 29, 1982

Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11, 1984

¹Includes ancillary activities located on the same worksite.

² On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(2)(a) The language relating to gloves in paragraph (b) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(b) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 5. Incorporation by Reference. (1) The material in paragraph (a) through (c) of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1994, is incorporated by reference:

(a) 29 CFR 1910.1000 to 29 CFR 1910.1025(e)(1)(ii), excluding the "Table 1 - Implementation Schedule";

(b) 29 CFR 1910.1025(e)(2) to 29 CFR 1910.1030(d)(3)(viii); and (c) 29 CFR 1910.1030(d)(3)(x) to 29 CFR 1910.1500.

(2) The "Table 1 - Implementation Schedule" in Section 4(1) of this administrative regulation shall apply in lieu of the schedule found in 29 CFR 1910 [4040].1025(e)(1)(ii).

(3) The language relating to gloves in paragraph (b) of this subsection shall apply in lieu of 29 CFR 1910 [4040].1030(d)(3)(ix).

(4) The revisions to 29 CFR 1910.1000, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 125, June 29, 1995, are incorporated by reference.

(5) The revisions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in the Federal Register, Volume 60, Number 196, October 11, 1995, are incorporated by reference.

(6) The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.

(7) ~~(5)~~ This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: February 7, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry and their employ-

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ees.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. The proposed amendments clarify definitions, and make minor changes and technical corrections to the existing regulation on asbestos. According to the Occupational Safety and Health Administration (OSHA), the lifting of the stay of enforcement of the lead regulation should have little cost impact on the lead and brass ingot industry. A large percentage of these businesses are currently in compliance with the regulation. Any costs incurred could be spread out over this six year period with little impact on cost each year as per OSHA.

(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 effect on competition.

3. 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. 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 1910.1001, as published in the Federal Register, Volume 60, Number 125, June 29, 1995; and 29 CFR 1910.1025, as published in the Federal Register, Volume 60, Number 196, October 12, 1995.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees working with asbestos and lead.

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 are exposed to asbestos and lead.

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 2:425E

This emergency administrative regulation amends requirements for working with certain types of asbestos containing material and clarifies typographical and technical errors. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate in 29 CFR 1953.23 requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" is to be filed with the Regulations Compiler on February 15, 1996.

PAUL E. PATTON, Governor

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JOE NORSWORTHY, Chairman

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

803 KAR 2:425E. Toxic and hazardous substances [Adoption of 29 CFR Part 1926.1100-1148].

RELATES TO: KRS [~~Chapter~~] 338.051, 338.061, 29 CFR 1926
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

EFFECTIVE: February 15, 1996

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [~~rules and~~] administrative regulations[~~and standards~~]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.~~]

~~Section 1. Incorporation by Reference. [The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.1100-1148 revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, Volume 58, Number 124. These standards are hereby incorporated by reference with the following additions, revisions, and deletions:] (1) The following material is incorporated by reference:~~

~~(a) 29 CFR 1926.1100-1148 revised as of July 1, 1994, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, Volume 58, Number 124.~~

~~(b) 29 CFR 1926.1101, "Occupational Exposure to Asbestos," is amended, as follows:~~

~~1. [(1)] The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 59, Number 153, August 10, 1994, is incorporated by reference.~~

~~2. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 34, February 21, 1995, is incorporated by reference.~~

~~3. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 125, June 29, 1995 is incorporated by reference.~~

~~4. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 134, July 13, 1995 is incorporated by reference.~~

~~5. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 189, September 29, 1995 is incorporated by reference.~~

~~(c) [(2)] The amendment to 29 CFR 1926.1147, "Ethylene oxide," as published in the Federal Register, Volume 58, Number 143, July 28, 1993, is incorporated by reference.~~

~~(2) [Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e).] This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. [(2)] Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: February 7, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers and employees in the construction industry who work with asbestos.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. The amendments clarify technical and typographical errors as well as offer alternative methods of compliance. In addition, the proposed reforms take the regulation to meet KRS 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no effect on cost 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 proposed amendments which will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These proposed 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 proposed 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 proposed 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 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. Kentucky's Occupational Safety and Health Program regulations affect all employers with one

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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 proposed amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendments adopt revisions to the previously adopted regulations 29 CFR 1926.1101, as published in the Federal Register, Volume 60, Number 125, June 29, 1995, Volume 60, Number 134, July 13, 1995, and Volume 60, Number 189, September 29, 1995.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These proposed amendments affect local government entities that have employees involved in construction work exposed to asbestos.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government involved in construction work who are exposed to asbestos.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these proposed 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 2:500E

This emergency administrative regulation clarifies ventilation and "hot work" requirements in confined and enclosed spaces and other dangerous atmospheres in maritime employment for public sector employers and employees. This emergency administrative regulation also amends requirements for working with certain types of asbestos containing material and clarifies technical and typographical errors. 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 (1) more stringent, within six (6) 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" is to be filed with the Regulations Compiler on February 15, 1996.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Chairman

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

803 KAR 2:500E. Maritime employment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

EFFECTIVE: February 15, 1996

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 administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

(1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;

(2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. Incorporation by Reference. (1) The following is incorporated by reference:

(a) Chapter 29, Part 1915~~, Part 1917, Part 1918 and Part 1919~~ 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.

1. The revisions to 29 CFR 1915.12, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 60, Number 51, March 16, 1995, are incorporated by reference.

2. The revisions to 29 CFR 1915.14, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 60, Number 51, March 16, 1995, are incorporated by reference.

3. The revisions to 29 CFR 1915.15, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 60, Number 51, March 16, 1995, are incorporated by reference.

4. 29 CFR 1915.1001 is revised, as follows:

a. The revisions to 29 CFR 1915.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 125, June 29, 1995, are incorporated by reference.

b. The revisions to 29 CFR 1915.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 134, July 13, 1995, are incorporated by reference.

c. The revisions to 29 CFR 1915.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 189, September 29, 1995, are incorporated by reference.

5. The revisions to 29 CFR 1915.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 245,

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December 22, 1994, are incorporated by reference.

(b) Chapter 29 Part 1917 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. [The revisions 29 CFR 1915.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.]

(c) The revisions 29 CFR 1917.28, "Hazard Communication", as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.

(d) Chapter 29 Part 1918 of the Code of Federal Regulations, revised as of July 1, 1994, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

(e) The revisions 29 CFR 1918.90, "Hazard Communication", as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.

(f) Chapter 29 Part 1919 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.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: February 7, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers having maritime operations and their employees.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. The amendments relating to confined and enclosed spaces and other dangerous atmospheres clarify ventilation and "hot work" requirements in confined and enclosed spaces and other dangerous atmospheres in maritime employment for public sector employers and employees. The amendments relating to asbestos clarify typographical and technical errors as well as offer alternative compliance methods.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little effect from these amendments.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no 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 amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendments adopt revisions, as published in the Federal Registers, Volume 60, Number 51, March 16, 1995, Volume 60, Number 125, June 29, 1995, Volume 60, Number 134, July 13, 1995, and Volume 60, Number 189, September 29, 1995.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed changes are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local

government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees in maritime operations working in confined and enclosed spaces and other dangerous atmospheres as well as those having employees working with asbestos.

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 in maritime operations who work in confined and enclosed spaces and other dangerous atmospheres as well as those who work with asbestos.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health and to revise the numbering of existing regulations to simplify research. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY
904 KAR 2:015E

This emergency administrative regulation, 904 KAR 2:015E, Supplemental programs for persons who are aged, blind or have a disability, is being amended to revise the standards for all levels of care for the State Supplementation Program due to the 1996 supplemental security income cost of living increase. This emergency amendment is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services since 1977 to pass along any cost of living increases in supplemental security income benefits to state supplementation recipients. In order to be in compliance, we shall assure that the state supplementation benefits are not reduced due to the cost of living increase granted by the Social Security Administration to its beneficiaries. This assures their continued ability to purchase the personal care they need in order to avoid costly institutional care under Medicaid. In order to implement the mandated 1996 cost of living increases for eligibility determinations made on or after January 1, 1996, it is necessary to promulgate this emergency administrative regulation. 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 February 15, 1996, filing.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g, EQ 95-79

EFFECTIVE: January 30, 1996

NECESSITY AND FUNCTION: The Cabinet for Families and Children [Human Resources] is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled [(AABD)], disadvantaged by the implementation of the Supplemental Security Income

Program [(SSI)]. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certified personal care homes [(PCH)] which accept state supplementation recipients and have a thirty-five (35) percent of the residents in the PCH's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation [(MI or MR)]. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "AABD" means aid to the aged, blind and disabled.

(2) "CMT" means certified medication technician.

(3) "DSI" means the Department for Social Insurance.

(4) "MI or MR" means mental illness or mental retardation.

(5) "MI or MR supplement" means the Persons with Mental Illness or Mental Retardation Supplement Program.

(6) "PCH" means personal care home.

(7) "Specialized personal care home" means a licensed personal care home which receives funding from the Department for Mental Health and Mental Retardation Services to employ mental health professionals who have specialized training in the care of residents with mental illness or mental retardation.

(8) "SSI" means Supplemental Security Income Program.

Section 2. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month; and
(b) The total of the SSI payment and other income for the current month.

(2) Recipients include former AABD recipients who became ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment is increased only:

(a) When income as recognized in December, 1973, decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband and wife living together, income changes after September, 1974, will result in an increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 3. [2.] Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections 5, 6, and 7 [4, 5, and 6] of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for persons who are aged, blind, or have a disability as contained in 907 KAR 1:011 and 907 KAR 1:004; and

(b) Requires special living arrangements; and
(c) Has insufficient income to meet their need for care.

(2) Special living arrangements include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:041; and

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2. Is licensed under KRS 216B.010 to 216B.131; or

(c) Situations in which a caretaker must be hired to provide care other than room and board.

(3) Each person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for SSI, application for SSI shall be mandatory.

Section 4. ~~[3.]~~ Eligibility for Caretaker Services. (1) Services by a caretaker shall be made to enable the individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Services by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult child who has a disability or a minor child;

3. Adult child of a parent who is aged, blind or has a disability.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

(a) How often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

Section 5. ~~[4.]~~ Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:004.

(2) The individual or couple is not eligible if countable resources exceed the limit of:

(a) \$2000 for individual; or

(b) \$3000 for couple.

Section 6. ~~[5.]~~ Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions are considered according to policies for the medically needy in 907 KAR 1:004.

(2) The optional supplementation payment is determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Except for payments for medical insurance or medical care and services, payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7. ~~[6.]~~ of this administrative regulation.

(3) Income of the ineligible spouse is:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) shall be conserved for the spouse.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The SSI twenty (20) dollars general exclusion is not an allowable deduction from income.

Section 7. ~~[6.]~~ Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) For an eligibility determination for a resident of a personal care home made on or after January 1, 1996, \$804 ~~[+995, \$792]~~;

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1996, \$609 ~~[+995, \$597]~~;

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 1996, \$503 ~~[+995, \$494]~~;

2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 1996, \$733 ~~[+995, \$715]~~;

3. For an eligibility determination for an eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 1996, \$777 ~~[+995, \$759]~~.

(2) In couple cases, when both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 8. ~~[7.]~~ Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:

1. A hospital;

2. A psychiatric hospital;

3. A nursing facility; and

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives SSI.

(2) If discharged in the month following the last month of continued benefits, the temporary absence continues through the date of discharge.

Section 9. ~~[8.]~~ Citizenship requirements. An applicant or recipient shall be:

(1) A citizen of the United States; or

(2) An alien legally admitted to this country for permanent residence; or

(3) An alien who is residing in this country under color of law.

Section 10. ~~[9.]~~ Residence Requirements. (1) The applicant or

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recipient shall be a resident of Kentucky.

(2) Supplemental payments may be made to Kentucky residents residing outside the state if:

(a) The individual has been placed in the other state by this state.

(b) Except with regard to the requirement shown in Section 8 [7] of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(d) If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall be no suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

(a) Is age twenty-one (21) and over;

(b) Is residing in the state; and

1. Intends to remain permanently or for an indefinite period; or

2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home is considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

(a) Under age twenty-one (21);

(b) Eligible for a supplemental payment based on blindness or disability; and

(c) Residing in the state; or

(d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

(a) Parents; or

(b) If one has been appointed, his legal guardian; or

(c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

(a) He returns to Kentucky; and

(b) He has a guardian, parent or spouse residing in Kentucky.

Section 11. ~~[40.]~~ Persons with Mental Illness or Mental Retardation (MI or MR) Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The PCH shall meet the following criteria to qualify for a supplementation payment:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The PCH shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or an individual who has received and successfully completed certified medication technician ~~[(CMT)]~~ training on duty for at least four (4) hours during the first or second shift each day. The PCH may not decrease staffing hours of the licensed nurse or individual who has successfully completed CMT training in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance ~~[(DSI)]~~ by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The PCH shall provide DSI with its tax identification number and address as part of the application process.

(7) The PCH shall provide DSI with a monthly report.

(a) The report shall list:

1. All residents of the PCH who were residents on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the PCH shall annotate the monthly report as follows:

1. A star shall indicate a resident has a MI or MR diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a MI or MR diagnosis and is a recipient of state supplementation.

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(c) The monthly report shall be used for:

1. Certification;
2. Payment; and
3. Audit purposes.

(d) The monthly report shall be postmarked to DSI by the fifth working day of the month.

(8) The PCH shall notify DSI if its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 12. [~~14~~] Training. (1) The PCH licensed nurse or individual who has successfully completed CMT training shall attend MI or MR basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) MI or MR basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

- (a) Importance of proper medication administration.
- (b) Side affects and adverse medication reactions with special attention to psychotropics.
- (c) Signs and symptoms of an acute onset of a psychiatric episode.
- (d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.
- (e) Guidance in the area of supervision versus patient rights for the MI or MR population.
- (f) Instruction in providing necessary activities to meet the needs of residents who have a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed CMT training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed CMT training and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule.

(b) The PCH shall have on staff a licensed nurse or individual who has successfully completed CMT training who:

1. Has received the MI or MR basic training; or
2. Is enrolled in the next scheduled MI or MR basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for PCH's.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with residents who have a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for MI or MR Supplement participants.

(6) The Department for Mental Health and Mental Retardation Services will provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to DSI of staff who completed the training workshop.

(7) DSI shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a PCH who has applied for the MI or MR

program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. [~~12~~] MI or MR Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the PCH to certify eligibility to participate in the MI or MR supplement:

(a) The PCH's initial MI or MR certification may be separate from the annual survey;

(b) The initial MI or MR certification shall be in effect until the next licensure survey that can be greater than or less than twelve (12) months;

(c) PCH's annual MI or MR recertification may be completed during the annual licensure survey;

(d) DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR basic training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed CMT training demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall review the PCH copy of the training certification prior to performing their record review during the MI or MR certification process.

(4) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The PCH is responsible for notifying DSI, within ten (10) working days, if the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 14. [~~13~~] Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: January 24, 1996

FILED WITH LRC: January 30, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected:

(a) There are 5,881 recipients of State Supplementation benefits who will be affected by the increase in the State Supplementation standards due to the mandated cost of living adjustment.

(b) There are three (3) personal care homes of the fifty-four (54) participants of the MI or MR Supplement program that are specialized personal care homes which will be affected by allowing the attendance of the basic training workshops to be optional.

(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: To be determined after the publication of the notice of intent.

(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 the publication of the notice of intent.

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

a. For increases in the state supplementation standards:

1. First year following implementation:

a. The standards for State Supplementation recipients increase by \$12 for recipients in Personal Care Homes and Family Care Homes.

b. The standards for State Supplementation for recipients of Caretaker Services increase by: Single Individual or Individual with Spouse - \$12; Couple (one or both requiring care) - \$18.

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

(b) No fiscal impact regarding the exemption from basic training for the MI/MR Supplement program for the three (3) specialized personal care homes.

(3) Effects on the promulgating administrative body:

(a) For increases in the state supplementation standards:

(a) Direct and indirect costs or savings:

1. First year: \$450,000.00, already anticipated in the state budget.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(b) For the exemption from the basic training workshops for the MI/MR Supplement program for the three (3) specialized personal care homes participating in the program:

(a) Direct and indirect costs or savings:

1. First year: Potential savings of \$375 in training reimbursements.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since State Supplementation pass through provisions are set forth through an agreement with the Department of Health and Human Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment implements the mandated 1996 cost of living increases for eligibility determinations made on or after January 1, 1996. The State Supplementation recipients residing in personal care or family care homes or receiving caretaker services will be assured of the ability to continue to purchase these services.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass through SSI benefit increases to State Supplementation recipients. In order to be in compliance, we must assure that the State Supplementation benefits are not reduced due to the cost of living increase granted by the Social Security Administration to its beneficiaries. This assures their continued ability to purchase the personal care they need in order to avoid costly institutional care under Title XIX (Medicaid).

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass through cost of living SSI benefit increases to State Supplementation recipients.

(11) TIERING: Is tiering applied? (1) "No" for the increase in standard of need due to the pass along of the cost-of-living increase.

(2) "Yes" for allowing attendance of the basic training workshops to be optional for specialized personal care homes which participate in the MI/MR Supplement program. (Explain why tiering was or was not used) (1) Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through an agreement with the Department of Health and Human Services. (2) Tiering was applied for providing the attendance of the basic training to be optional for the three (3) specialized personal care homes participating in the MI/MR Supplement program. The information received in the one (1) day basic training workshop is a duplication of training received by staff in the three (3) specialized personal care homes who receive special training in the care of residents with mental illnesses.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 20 CFR 416.2096.

2. State compliance standards. This amended administrative regulation includes the 1996 cost of living increases to place Kentucky in compliance with federal SSI guideline.

3. Minimum or uniform standards contained in the federal mandate. Maintain State Supplementation payment and pass-along cost of living increases.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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

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government or only a part or division of the local government.

3. State the aspect or service of local government to which this administrative regulation relates.

4. How does this administrative regulation affect the local government or any service it provides?

STATEMENT OF EMERGENCY 907 KAR 1:060E

This emergency administrative regulation is being promulgated to provide various clarifications with regard to Medicaid coverage of medical transportation and the manner in which program limitations will be applied. This action must be taken on an emergency basis to reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid beneficiaries. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 30, 1995 since this administrative regulation revises the June 30, 1995 preauthorization requirements. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services

907 KAR 1:060E. Medical transportation.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 205, 42 CFR 440.170, 42 USC 1396(d), EO 95-79

EFFECTIVE: January 18, 1996

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services ~~(Human Resources)~~ has responsibility to administer the Medicaid Program ~~(of Medical Assistance)~~. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to the service of transportation for access to medical services for which payment shall be made by the Medicaid ~~(Medical Assistance)~~ Program in behalf of both the categorically needy and the medically needy. This administrative regulation is substantially different from the previously promulgated emergency administrative regulation in compliance with the Commonwealth of Kentucky Franklin Circuit Court Civil Action No. 95-CI-01094.

Section 1. Definitions. (1) "Household" means a single housing unit which is legally considered the residence of one (1) or more persons who may or may not be related. An apartment building, duplex, four (4) plex, etc. shall not be considered a single housing unit.

(2) "Medical necessity" means a condition requiring medical attention.

(3) "Medical service area" means a county of residence and contiguous counties.

Section 2. Material Incorporated by Reference. (1) The "Medicaid Transportation Services Manual", dated January 1996 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 3. Transportation under the Medicaid Program shall be provided only to Medicaid eligible recipients and if necessary, an attendant or parent to accompany the recipient.

Section 4. ~~(+) Ambulance Services.~~ Ambulance services shall be provided only if medically necessary ~~(when other means of transportation is contraindicated,)~~ and if the ~~(following)~~ criteria shown in this section are met.

(1) Emergency ambulance services shall be provided without preauthorization to and from the nearest hospital emergency room or appropriate medical facility or provider as defined in 907 KAR 1:061E and specified in the incorporated Transportation Services Manual. A statement that the Medicaid recipient received emergency services shall be obtained from the medical personnel of the facility which treated the recipient. ~~(may be provided without preauthorization when the emergency treatment is indicated and rendered.)~~

(2) ~~(Nonemergency ambulance services designed to facilitate the orderly admittance, transfer or placement of the patient shall be permitted without preauthorization when the place of destination, point of departure, and purpose of transfer meet guidelines specified by the agency.~~

~~(3) Nonemergency ambulance services ~~(for round trips)~~ to a hospital, ~~(or a)~~ clinic, physician's office or other health facility ~~(to secure outpatient treatment or therapy)~~ shall be provided if ~~(when)~~ preauthorized. If the Department for Social Insurance local office is closed, the nonemergency ambulance service shall be postauthorized. Preauthorization and postauthorization shall be performed by the Department for Medicaid Services or its authorized representative utilizing criteria shown in Sections 4 and 5 of this administrative regulation. ~~(by the Division of Medical Assistance.)~~~~

Section 5. ~~(2.)~~ Locally Authorized Medical Transportation. (1) A transportation preauthorization ~~(Through December 31, 1990 a petty cash)~~ system administered at each ~~(the)~~ local Department for Social Insurance office ~~(level)~~ shall provide for preauthorized nonemergency, ~~nonambulance)~~ transportation approvals, including nonemergency ambulance services, limited to the provision of the services under the following conditions:

(a) The recipient ~~(client)~~ shall be traveling to or from a Medicaid ~~(medical service)~~ covered service ~~(under a state plan)~~, exclusive of pharmaceutical services ~~(drugs);~~

(b) The service shall be determined to be medically necessary; ~~(and)~~

(c) Payment for transportation shall be necessary to ensure ~~(assure)~~ that the medical service is secured; and

(d) Failure by the Medicaid Program to pay for transportation results in a hardship to the Medicaid recipient. A hardship shall not be considered to exist if free transportation which is appropriate for the recipient's medical needs is available or if use of an operational household vehicle is available, appropriate, and is not used for commercial purposes. ~~(The same system of preauthorization of transportation shall continue in effect on and after January 1, 1991,~~

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~~except that the local petty cash system shall be dissolved and payments for locally authorized medical transportation shall be made directly to participating providers by the Medicaid program.]~~

(2) Locally authorized medical transportation ~~[as above]~~ shall be provided as necessary on an exceptional postauthorization basis as specified in Section 3(2) of this administrative regulation with the additional limitation that postauthorization shall be justified by the recipient indicating [elient showing] the need for medical transportation arose and was provided [fulfilled] outside normal working hours and that payment for the transportation has not been made.

Section 6. ~~[3.]~~ Determination of Necessity. (1) All approvals for nonemergency transportation services [Any determination of medical necessity of transportation,] and the provision of preauthorization and postauthorization, shall be made by the Department for Medicaid Services [ecabinet] or by the department's [an] authorized representative.

(2) Only transportation within the medical service area shall be approved. Transportation services provided outside the medical service area shall be approved by the Department for Medicaid Services or the department's authorized representative if the medical service required by the recipient is not available in that area and the recipient has been appropriately referred by a local medical provider. [unless preauthorized by the cabinet (or postauthorized in certain instances), except in instances where previously designated criteria for transportation not requiring authorization shall be met.]

(3) Only the least expensive available transportation suitable for the recipient's needs shall be approved.

Section 7. The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996.

JOHN H. MORSE, Commissioner and Secretary
APPROVED BY AGENCY: January 18, 1996
FILED WITH LRC: January 18, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jackie Eder

(1) Type and number of entities affected: Various medical transportation providers and all medical recipients using medical transportation.

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

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

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

(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: Shown in companion regulation 907 KAR 1:061E.

2. Continuing costs or savings: Shown in companion regulation 907 KAR 1:061E.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

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

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

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

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

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid beneficiaries.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This is a companion regulation with 907 KAR 1:061E, Payments for medical transportation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

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STATEMENT OF EMERGENCY 907 KAR 1:061E

This emergency administrative regulation is being promulgated to provide for rate revisions and limitations on payments for providers of Medicaid medical transportation. This action must be taken on an emergency basis to reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid beneficiaries. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 30, 1995 since this administrative regulation revises the June 30, 1995 payment rates pursuant to an agreement between the program and plaintiffs who appealed the rates implemented July 1, 1995. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services

907 KAR 1:061E. Payments for medical transportation.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 205, 42 CFR 440.170, 447.200 through 447.205, 42 USC 1396(d), EO 95-79

EFFECTIVE: January 18, 1996

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the department [cabinet] for medical transportation services. This administrative regulation is substantially different from the previously promulgated emergency administrative regulation in compliance with the Commonwealth of Kentucky Franklin Circuit Court Civil Action No. 95-CI-01094.

Section 1. Definitions. For purposes of this administrative regulation, the following definitions apply:

(1) "Advanced life support" (ALS) ambulance services means ambulance services meeting the standards for advanced life support services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of ALS services.

(2) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.

(3) "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of air ambulance services.

(4) "Ambulatory recipient who is disoriented" means an individual who is confused, especially with respect to time, place, and identity

of persons or objects. The extent of disorientation shall be sufficient to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(5) [(4)] "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services. A parent who must accompany a minor child is considered to be an attendant.

(6) "Basic life support" (BLS) ambulance services means ambulance services meeting the standards for basic life support services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of BLS services.

(7) [(2)] "Commercial transportation carriers [vendors]" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public such as a taxi cab.

(8) "Loaded miles" means miles when the transportation carrier is transporting at least one (1) patient.

(9) "Medical condition" is defined as any condition of the recipient which does not allow him to travel alone or without physical assistance.

(10) [(9)] "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (except community [e.g.] mental health centers). The segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the cabinet.

(11) "Nonemergency health transportation services (NEHT)" means transportation services meeting the standards for nonemergency health transportation services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of NEHT services.

(12) [(4)] "Private automobile carrier [vendor]" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. [Included within this definition are ambulance-type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program as a provider of ambulance services, if willing to accept private automobile vendor rates.]

(13) "Recipient" means an individual who is eligible for Medicaid benefits and meets the criteria for transportation services as defined in 907 KAR 1:060.

(14) [(5)] "Specialty [individual] carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment required shall be a van or similar type vehicle with a ramp or lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient [if necessary]. To be considered a specialty [individual] carrier for purposes of reimbursement from the cabinet, the carrier shall be recognized by the cabinet as a specialty [individual] carrier with approval given by the cabinet for reimbursement at

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specialty ~~(individual)~~ carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty ~~(individual)~~ carrier service in an adequate and safe manner.

(15) "Upper limit" means the maximum reimbursement rate that the Department for Medicaid Services shall pay the transportation provider for the services provided.

(16) ~~(6)~~ "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred if ~~(when)~~ the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.

Section 2. Licensed Ambulance Services Reimbursement. (1) The department ~~(cabinet)~~ shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the department ~~(cabinet)~~.

(2) The maximum rate shall be the amount arrived at by combining the base rate, mileage allowance, oxygen rate, and cost of other supplies ~~(following component costs)~~, as applicable:

(a) The base rate for ALS emergency transportation to the emergency room of a hospital ~~(which)~~ shall be set at ~~eighty-five (85)~~ ~~(fifty (50))~~ dollars per one (1) way trip ~~(and includes all mileage costs for the first ten (10) miles)~~; the mileage allowance for trips shall be three (3) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty-five (25) dollars shall be set for each additional recipient with no additional allowance for mileage.

(b) The rate for air ambulance transportation shall be an all-inclusive rate. Reimbursement shall be the provider's usual and customary charge not to exceed the upper limit of \$3,500. All claims for air ambulance transportation services shall be submitted to the Department for Medicaid Services and shall be reviewed for determination that air transport was medically necessary and appropriate.

(c) The base rate for BLS emergency transportation to the emergency room of a hospital shall be set at ~~sixty-five (65)~~ dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty (20) dollars shall be set for each additional recipient with no additional allowance for mileage.

~~(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;~~

(d) The base rate for any ALS or BLS providing emergency ambulance transportation to an appropriate medical facility or provider which is not the emergency room of a hospital shall be set at ~~fifty-five (55)~~ dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars per mile from mile one (1); a flat rate of fifteen (15) dollars shall be set for each additional recipient with no additional rate for mileage. Payment shall be contingent upon review of required documentation. Claims shall be reviewed by the Department for Medicaid Services. Required documentation shall be a statement of a medical emergency by the attending medical provider.

(e) The base rate for NEHT services when transporting a recipient who is on a stretcher to a medical provider, other than a pharmacy, shall be set at forty (40) dollars per one (1) way trip; the mileage allowance for trips shall be one (1) dollar and fifty (50) cents per mile. The reimbursement for NEHT services when transporting a recipient who is in a wheelchair shall be in accordance with Section 6 of this administrative regulation.

(f) The base rate for nonemergency transportation for all licensed ambulance services when no medical care or treatment of a recipient is required or indicated during transport shall be the rate specified in paragraph (e) of this subsection.

(g) ~~(e)~~ An oxygen rate, which is set at ~~ten (10)~~ ~~(eight (8))~~ dollars

per one (1) way trip; for all licensed ambulance services, excluding air ambulances; ~~(and)~~

(h) ~~(d)~~ The cost ~~(as determined by the cabinet)~~ of other itemized supplies for ALS or BLS emergency transportation services shall be the actual cost as reflected on the transportation provider's invoice which shall be maintained in the provider's files and shall be produced upon request by the cabinet.

Section 3. Commercial Transportation Carriers Reimbursement ~~(Vendors)~~. The department ~~(cabinet)~~ shall reimburse participating commercial transportation carriers at usual commercial rates with limitations as follows: ~~(vendors at the normal passenger rate charged to the general public, taking into consideration as applicable the reduced fees frequently and customarily paid when multiple passengers are transported at the same time.)~~

(1) For taxi services provided in regulated areas the provider shall be reimbursed the normal passenger rate charged to the general public for a one (1) way trip regardless of the number of Medicaid eligible recipients transported when the trip is within the medical service area (as defined in 907 KAR 1:060), i.e., the taxi shall be paid the single passenger rate regardless of the number of additional passengers.

~~(2) [The following maximum rates shall be applicable] For (franchised (licensed)) taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for (franchised (licensed)) taxi services in regulated areas when they go outside the medical service area (as defined in 907 KAR 1:060), the provider shall be reimbursed the normal passenger rate charged the general public for a single passenger (without payment for additional passengers, if any), up to the upper limit; reimbursement for transport of a parent or attendant shall be considered included within the upper limit allowed for the trip. The upper limit for a taxi transporting a recipient shall be:~~

~~(a) [(4) The upper limit shall be] The usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles.~~

~~(b) [(2) The upper limit shall be] The usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.~~

~~(c) [(3) The upper limit shall be] The usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.~~

~~(d) [(4) The upper limit shall be] The usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles.~~

~~(e) [(5) The upper limit] For trips of fifty-one (51) miles or above, (shall be) the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles.~~

Section 4. Private Automobile Carriers Reimbursement ~~(Vendors)~~.

(1) The department ~~(cabinet)~~ shall reimburse private automobile carriers ~~(vendors)~~ at the basic rate of ~~twenty-two (22)~~ ~~(twelve (12))~~ cents per mile plus a flat fee of ~~four (4)~~ ~~(two (2))~~ dollars per recipient ~~(eligible passenger)~~ if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of ~~six (6)~~ ~~(three (3))~~ dollars for the first recipient ~~(passenger)~~ plus ~~four (4)~~ ~~(two (2))~~ dollars each for waiting time for additional recipients ~~(eligible passengers)~~. Private automobile carriers ~~(vendors)~~ shall have a signed participation agreement with the Department for Medicaid Services prior to furnishing reimbursable medical transportation services.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile carriers ~~(vendors)~~ shall be computed on the basis of a maximum allowable fee of ~~ten (10)~~ ~~(five (5))~~ dollars for the first recipient ~~(passenger)~~ plus ~~four (4)~~ ~~(two (2))~~ dollars each for waiting

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time for additional recipients ~~[eligible passengers]~~. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twenty-two (22) ~~[twelve (12)]~~ cents per mile plus four (4) ~~[two (2)]~~ dollars for waiting time would not equal the six (6) ~~[three (3)]~~ dollars or ten (10) ~~[five (5)]~~ dollars allowable amounts, the higher amount [that amount] may be paid to encourage private automobile carriers ~~[venders]~~ to provide necessary medical transportation. Additionally, nothing in this section requires the department [cabinet] to pay the amounts specified if [in the event] the private automobile carrier ~~[vender]~~ expresses a preference for reimbursement in a lesser amount; then [in that event], the lesser amount shall be paid. Toll charges shall be reimbursable when presented with a receipt [incurred].

(4) Waiting time shall be a reimbursable component of the private automobile carrier ~~[vender]~~ transportation fee only if [when] waiting time occurs. If [When] waiting time occurs due to admittance of the recipient into the medical institution, the private automobile carrier ~~[vender]~~ may be reimbursed for the return trip to the point of recipient pickup as though the recipient [client] were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section. Waiting time shall not be paid for the attendant or caretaker relative (e.g., mother, father) who is accompanying the recipient and not personally being transported for Medicaid covered service.

(5) If a private automobile carrier is transporting more than one (1) recipient, only one (1) mileage payment shall be allowed. Mileage shall be computed on the basis of the distance between the most remote recipient and the most remote medical service utilized; to include any necessary additional mileage to pick up and discharge the additional recipients.

Section 5. Noncommercial Group Carriers. The department [cabinet] shall reimburse participating noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported. Payment for a parent or other attendant shall be at the usual recipient rate.

Section 6. Specialty ~~[Individual]~~ Carriers. (1) Participating specialty ~~[individual]~~ carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the department [cabinet]; or

(c) The program maximum established for the service.

(2) Program maximums shall be [are]:

(a) For nonambulatory recipients who require the use of a wheelchair [patients; for transportation within a distance of ten (10) miles or less], the upper limit shall be twenty-five (25) dollars for the first recipient [patient] plus four (4) [ten (10)] dollars for each additional nonambulatory recipient [patient] transported on the same trip, for each time a recipient [patient] is transported to or transported from the medical service site. To this base rate shall [may] be added one (1) [two (2)] dollar[s] and fifty (50) cents per loaded mile for the first recipient [per patient] for miles the recipient [patient(s)] is transported [above ten (10) (one (1) way)], and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(b) For ambulatory recipients who are disoriented [patients; for transportation within a distance of ten (10) miles or less], the upper limit shall be twelve (12) dollars and fifty (50) cents for the first recipient plus four (4) dollars for each additional ambulatory disorient-

ed recipient transported on the same trip, [per patient] for each time a recipient [patient(s)] is transported to or transported from the medical service site. To this base rate shall [may] be added one (1) [two (2)] dollar[s] and fifty (50) cents per loaded mile for the first recipient [per patient] for miles the recipient [patient] is transported [above ten (10) (one (1) way)], and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(c) For both paragraphs (a) and (b) of this subsection, [mileage shall be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage shall be allowed only for those miles the recipient is actually transported in excess of ten (10); empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty ~~[individual]~~ carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but shall not include ~~[including]~~ recipients who need to be transported as ~~[a]~~ stretcher patients; and

(b) Ambulatory recipients who are ~~[but]~~ disoriented ~~[recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation shall be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation].~~

(4) The specialty carrier shall obtain a statement from the recipient's physician (or, if the recipient is in a ~~[skilled]~~ nursing ~~[or intermediate care] facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.~~

Section 7. ~~[Specially authorized transportation services provided by participating ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized;]~~ Specially authorized transportation services ~~[provided by participating specialty carriers, or as otherwise]~~ authorized in unforeseen circumstances may be paid for at a rate adequate to secure the necessary service; ~~[in no event, however, shall]~~ the amount allowed shall not exceed the usual and customary charge of the provider. The Department for Medicaid Services shall review and approve or disapprove requests for specially authorized transportation services based on medical necessity.

Section 8. Use of Flat Rates. ~~[When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area);]~~ Transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the participating transportation provider computed in the usual manner if:

(1) The recipient chooses to use a medical provider outside the medical service area (defined in 907 KAR 1:060); and

(2) The medical service is available in the recipient's medical service area; and

(3) The recipient has not been appropriately referred by the medical provider within his medical service area.

Section 9. Posting of Rates. All transportation providers, except private auto providers, shall be required to post their rates with the Department for Social Insurance offices in the counties which they serve. These rates shall apply for all Medicaid recipients and shall be effective for a twelve (12) month period and may be revised on a quarterly basis. The rate charged to the Medicaid Program shall not

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exceed the rate charged to the general public.

Section 10. [9-] Meals and Lodging. The flat rate [upper limits] for meals and lodgings for recipients and attendants when preauthorized (or postauthorized if appropriate) by the department [cabinet] shall be as follows:

(1) Standard area:

(a) Meals: breakfast - four (4) dollars per day; lunch - five (5) dollars per day; dinner - eleven (11) dollars per day; and

(b) Lodgings: [~~actual cost up to \$40 per day if known; if not known,~~] forty (40) dollars per day.

(2) High rate area:

(a) Meals: breakfast - five (5) dollars per day; lunch - six (6) dollars per day; dinner - fifteen (15) dollars per day; and

(b) Lodgings: [~~actual cost up to \$55 per day if known; if not known,~~] fifty-five (55) dollars per day.

Section 11. [40-] Limitations. (1) Any reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization for medical transportation as required by the department [cabinet].

(2)(a) Authorization shall not be granted for recipients transported for purposes other than to take the recipient to or from covered Medicaid services being provided to that recipient, except in the instance of one (1) parent accompanying a child to or from covered medical services being provided to the child or if one (1) attendant is authorized for a recipient traveling to or from covered medical services based on medical condition of the recipient.

(b) Reimbursement shall be limited to transportation services and shall not include the services, salary or time of the attendant or parent.

(3) An individual who owns a taxi company and who uses the taxi as his personal vehicle shall be reimbursed at the private auto rate when transporting household family members.

(4) Mileage for reimbursement purposes shall be computed by the most direct accessible route from point of pickup to point of delivery.

Section 12. The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996.

JOHN H. MORSE, Commissioner and Secretary
APPROVED BY AGENCY: January 18, 1996
FILED WITH LRC: January 18, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jackie Eder

(1) Type and number of entities affected: Various medical transportation providers and all medical recipients using medical transportation.

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

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

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

(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: \$5.6 million (cost)*

2. Continuing costs or savings: \$5.6 million (cost)*

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

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

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

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

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

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid beneficiaries.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This is a companion regulation with 907 KAR 1:060E, Medical transportation. *It should be noted that cost savings measures implemented in 1995 are expected to save approximately \$4.5 million annually, so the net cost impact is expected to be in the range of \$1.1 million to \$2.0 million annually.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation

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does not set stricter requirements.

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

STATEMENT OF EMERGENCY 908 KAR 1:340E

The Cabinet for Health Services is authorized by KRS 194.050 and 222.231 to establish by administrative regulation standards relating to narcotic treatment programs which do not presently exist. An emergency administrative regulation is necessary in order to immediately place into effect standards for narcotic treatment programs to address the license application process, organization and administration policies of these programs, personnel requirements and polices, physical plant requirements, program admission and readmission requirements, treatment protocol requirements, client rights, penalties for program noncompliance, and program appeal rights. An ordinary administrative regulation would not suffice because of the time required for it to take effect and the immediate need to protect the human health and the environment through the regulation of programs which treat narcotic addicts with controlled substances and which are presently not regulated by state administrative regulations. 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 when the emergency administrative regulation is filed.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services

908 KAR 1:340E. Narcotic treatment programs.

RELATES TO: KRS Chapter 222, 21 CFR Parts 291, 1301

STATUTORY AUTHORITY: KRS 194.050, 222.231, 21 CFR Parts 291, 1301, EO 95-79

EFFECTIVE: January 30, 1996

NECESSITY AND FUNCTION: KRS 194.050 and 222.231 authorize the Cabinet for Human Resources to establish guidelines and provide for the systematic evaluation of effectiveness of narcotic treatment programs. Executive Order 95-79, effective 12/28/95, reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation establishes the State Narcotic Authority with the Division of Substance Abuse Services, within the Department for Mental Health and Mental Retardation Services, and establishes licensure and operations requirements for narcotic treatment programs.

Section 1. Definitions. (1) "Administrative detoxification" means the detoxification from the approved controlled substance for the safety and well being of the client, other clients, and staff of the narcotic treatment program.

(2) "Approved controlled substance" means the drugs methadone (powdered methadone is not an approved controlled substance) or ORLAAM (brand of levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) used in the treatment of narcotic addiction.

(3) "CHS or cabinet" means the Cabinet for Health Services.

(4) "Client" means any individual who receives a controlled

substance for the purpose of maintenance or detoxification in an NTP.

(5) "DEA" means the Drug Enforcement Administration.

(6) "Dose" means a one (1) day quantity of an approved controlled substance, administered on site, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection.

(7) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(8) "FDA" means the Food and Drug Administration.

(9) "Main program" means the location where all administrative and medical information related to the narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(10) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, urine screens) at the main location.

(11) "Narcotic detoxification program" means a program using approved controlled substances in continually reducing dosages over a period of time for the purpose of relieving or reducing withdrawal symptoms.

(12) "Narcotic maintenance" means a treatment procedure using an approved controlled substance over a period of time to relieve withdrawal symptoms, reduce narcotic craving, and permit normal functioning so that, in combination with rehabilitation services, clients can develop a productive life-style.

(13) "Narcotic treatment program" or "NTP" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(14) "Phase treatment" means the client's progress through treatment in a graduated sequence system.

(15) "Program sponsor" means a person or representative of an individual or entity who assumes responsibilities for the operation of a narcotic treatment program as well as being responsible for the on-site conduct of all employees, and other persons providing services, and ensures that the program is operated in compliance with this administrative regulation.

(16) "Proposed program" means an individual or entity in the process of seeking a narcotic treatment license.

(17) "Public health director" means the director of the local public health department.

(18) "SNA" means the State Narcotic Authority.

(19) "Take-home dose" means a quantity of an approved controlled substance which the client is eligible to take off site.

(20) "Voluntary detoxification" means a client requested, physician supervised withdrawal from the approved controlled substance.

Section 2. State Narcotic Authority. The SNA shall be the Director, Division of Substance Abuse Services within the Department for Mental Health and Mental Retardation Services.

Section 3. Alternative Distribution System. The SNA shall establish an alternative distribution system regarding the direct shipment of methadone and ORLAAM to approved treatment programs using narcotic drugs. An approved NTP shall submit a list of personnel, with a copy of the powers of attorney that authorizes them to sign order forms and receive shipments of controlled substances, pursuant to 21 CFR 1305.03, 1305.04, 1305.07, to the Hazelwood Center. Programs may not designate staff other than a physician, registered nurse, licensed practical nurse, or pharmacist to sign for or receive shipments of controlled substances. Programs shall submit a completed federal form 222 to Hazelwood Center, 1800 Bluegrass Avenue, Louisville, Kentucky 40202 to obtain methadone or ORLAAM.

Section 4. Application to Operate a NTP. (1) A proposed program desiring to operate a NTP shall meet the requirements of this

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administrative regulation, and shall be licensed in accordance with 908 KAR 1:150 through 908 KAR 1:260 prior to application.

(2) The proposed program shall submit each staff member's, including the program sponsor, administrator, and all other personnel, profile and resume of educational and professional experience, including Social Security numbers and date of birth.

(a) If the program is a corporation or partnership, the application shall list all partners' and officers' names, addresses, and social security numbers.

(b) Failure to provide this information shall disqualify the application for further review.

(3) The proposed program shall submit or cause to be submitted on its behalf to the SNA a written protocol which shall serve as an application for licensure by the SNA. This protocol shall include the following:

(a) A plan of operation;

(b) A description of the geographic area to be served by the program;

(c) Population and area to be served;

(d) The estimated number of persons, in the described area, addicted to heroin or other morphine-like drugs and an explanation of the basis of the estimate;

(e) The estimated number of persons in the described area addicted to heroin or other morphine-like drugs presently under treatment in methadone and other treatment programs;

(f) The number of patients in regular treatment, projected rate of intake, and factors controlling projected intake;

(g) Program goal;

(h) Plan for evaluation;

(i) Memoranda of agreement which reflect supportive services from the administrative head of the following agencies:

1. Hospitals;

2. Local law enforcement including jails;

3. Community mental health and mental retardation agencies;

4. Private, for-profit alcohol and drug services and publicly funded alcohol and drug services;

5. Department of Vocational Rehabilitation Services; and

6. Private, for-profit mental health counseling services;

(j) Client identification system;

(k) System to prevent client's multiple program registration;

(l) Organizational chart which includes the persons responsible for the program;

(m) First year budget, which list available, pending, or projected funds;

(n) Copies of letters verifying funding;

(o) Schedule of the amount of the client fees;

(p) Duties and responsibilities of each staff member and the relationship between the staffing pattern and the treatment goals;

(q) Duties and responsibilities of the medical director;

(r) Plan for delegation of the medical director's duties, if appropriate;

(s) Training and experience of counselors and therapists;

(t) Counselor and therapist caseload;

(u) Procedures and criteria for client selection;

(v) Program rules and instructions;

(w) Facility description;

(x) Initial dosage levels;

(y) Daily dosage levels;

(z) Operational procedures including the procedures to be used in inventory maintenance and daily dosing schedules;

(aa) Procedures which provide for cooperation with local jails and hospitals for either withdrawal or maintenance while in custody or hospitalized in the event of client incarceration or hospitalization;

(bb) Procedures in the event of state or national or man-made emergency or disaster;

(cc) Urinalysis procedures which utilize random selection or unannounced collection;

(dd) Procedures for scheduled termination, voluntary termination, and involuntary termination for cause, including reasons for termination for cause;

(ee) Fair hearing procedures for client grievances;

(ff) Copies of all forms developed and to be used by the proposed NTP;

(gg) Facility address and dimensions;

(hh) Amount of space devoted to methadone treatment, including waiting, counseling, dispensing, and storage areas;

(ii) Days and hours of dispensing;

(jj) Days and hours of other program services;

(kk) Type of services provided and the hours of use, if the facility is also used for purposes other than narcotic treatment; and

(ll) Diagram of the facility housing the NTP and an accompanying narrative which describes client flow. The diagram and narrative shall specify:

1. Waiting areas;

2. Office space;

3. Dispensing area;

4. Urine collection locations;

5. Record storage area;

6. Parking or transportation access; and

7. The relation of the services to the total facility.

(3) A protocol proposing a new program or a complete revision of the protocol of an approved program shall be submitted to the SNA.

(4) The proposed program shall submit written policies and procedures in accordance with Sections 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 of this administrative regulation.

Section 5. SNA Application Review Process. (1) The SNA shall review the application materials within thirty (30) working days for the following:

(a) Criminal convictions by all individuals or entities involved with the proposed program within the past five (5) years, including violations of controlled substance laws and regulations;

(b) Suspension or revocation of any FDA, DEA, state narcotic licenses, or professional licenses in the past five (5) years of any staff member including the medical director, registered nurses, licensed practical nurses and registered pharmacist; and

(c) The written monitoring reports and compliance reports of other NTPs currently operated by the applicant or by any corporation or partnership with whom the applicant has been associated in the past five (5) years. These reports shall be obtained from the DEA and FDA agents, medical licensing boards, pharmacy licensing boards, nursing licensing boards, and from other SNAs.

(2) The SNA shall not grant an application to operate a NTP to any applicant that has employed staff or, if applicant is a corporation or partnership, any officer of the corporation or member of the partnership who was convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years.

(3) The SNA shall work in collaboration with the DEA and FDA in reviewing the proposed application. Before any narcotic license shall be issued to the proposed program, the SNA, the DEA office, and the FDA office shall all agree.

(4) The SNA shall conduct an on-site inspection to review the proposed program and interview the medical director, program sponsor and dosing staff.

(5) The SNA shall not approve any application for a NTP to any entity that poses a risk to the health and safety of the public based on a history of noncompliance with state and federal regulations as verified by the DEA or FDA or state licensure agencies in states in which the entity currently legally operates.

(6) The SNA shall respond in writing, within ten (10) working days, to the proposed program upon receipt of all reports and documents from the applicant and all agencies involved.

(7) If the application to operate the NTP is approved the SNA shall, within thirty (30) working days of the completion of the review

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process:

(a) Issue a letter which shall indicate the approval to operate a NTP, the DEA license number, the FDA license number, and the expiration date of the license to operate; and

(b) Assign a facility responsible for the distribution of the approved controlled substances to be used in the NTP.

(8) If the application to operate a NTP is not approved within thirty (30) working days, the SNA shall respond in writing citing the deficiencies, the requirements and time frames for taking corrective actions to make the program licensable.

(9) The proposed program shall provide a plan of correction for deficiencies cited within fifteen (15) working days from date of receipt of the written deficiencies.

Section 6. Organization and Administration Policies. (1) NTPs shall develop policies and procedures that include:

(a) Waiting list criteria;

(b) Criteria for the use of ORLAAM (levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) for clients needing or desiring take-home doses, but who do not meet eligibility requirements for take-home doses or for clients who do meet eligibility requirements, but who continue to give urine drug screens positive for illicit drugs or inappropriate prescription drugs;

(c) Policies pertaining to the preparation and labeling of client doses which shall include:

1. The quantity of approved controlled substances that is indicated on the client's narcotic sheet within the medical record;

2. Assurance that doses shall be labeled with the exact quantity of narcotic drug ordered;

3. Take-home doses shall be formulated in such a manner that shall reduce the likelihood of injecting the dose;

4. Policies that permit clients to know their dose level; and

5. Policies that shall provide for the packaging of take-home doses of the approved controlled substances in containers that meet the requirements of 15 USC 1471. The label of the doses shall include the name of the program, address and telephone number of the program, name of the controlled substance, name of the client, and the quantity of the controlled substance, unless the client has requested in writing that the quantity of the substance not be revealed to them, and the name of the physician ordering the substance.

(2) The program policies shall indicate that the medical director or program physician at the individual NTP is in charge of all dose adjustments.

(3) The program policies shall indicate that dosing personnel do not alter client doses without the medical director or program physician's order.

(4) Verbal dosing orders shall be signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(5) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program physician.

(6) Detoxification policies for voluntary and administrative detoxification shall be in compliance with 21 CFR 291.505(d)(8) and (9), i.e., short term (thirty (30) days or less), or long term (more than thirty (30) days and as much as 180 days).

(7) Urine collection policies for drug screening purposes shall be developed to assure absence of falsification. Each sample shall be analyzed for the following drugs:

(a) Methadone;

(b) Cocaine;

(c) Opiates;

(d) Amphetamines;

(e) Barbiturates;

(f) Tetrahydrocannabinol;

(g) Benzodiazepines; and

(h) Any other drug(s) that has been determined by the NTP or the

SNA to be abused in that program's locality or any other drugs that may have been abused by the client.

(8) NTPs shall have policies that prohibit procedures for offering a bounty, monetary or equipment or merchandise reward, or free services for individuals in exchange for recruitment of new clients into the program.

(9) NTPs shall assure compliance with the system of treatment phases outlined in Section 11 of this administrative regulation.

(10) NTPs shall develop quality assurance policies to assure that services provided are achieving beneficial effects for the clients using the services.

(11) Urine drug screens shall be reviewed by the treatment team monthly to determine client's reduction in the use of unauthorized medications.

(12) Controlled substance medications shall be considered unapproved usage if they are being used by the client without a valid prescription.

(13) A urine drug screen negative for the approved controlled substances allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(14) The NTP shall assure that urine drug screens are not used as the sole criteria for dismissing clients from the program.

(15) NTPs shall develop quality assurance procedures to determine the adequacy of the NTP's organization and service delivery. The assessment shall:

(a) Examine the content of the NTP's organizational and administrative structure and shall assess the following:

1. Availability of services to include counseling services;

2. Availability of physical health services to clients;

3. Vocational training available to clients;

4. Legal assistance or referral, if indicated for the client;

5. Americans With Disabilities Act (ADA) defined accessibility in the on-site programs to the clients;

6. Quality assurance of the program structure; and

7. Continuity of services and care.

(b) Be conducted semiannually by the clinical supervisor, medical director, program sponsor, and the dosing nurse supervisor;

(c) Evaluate the following:

1. Appropriateness of the services delivered;

2. Completeness of documentation in client records;

3. Quality of and participation in staff training programs; and

4. Status of licenses and certification documents.

(16) All NTPs shall be open for dosing services seven (7) days a week with the exception of the following holidays:

(a) New Years Day, January 1;

(b) Presidents Day;

(c) Martin Luther King Day;

(d) Memorial Day, last Monday in May;

(e) Independence Day, July 4;

(f) Labor Day, first Monday in September;

(g) Thanksgiving Day, fourth Thursday in November; and

(h) Christmas Day, December 25.

Section 7. Personnel Policies. (1) The NTP shall have a program sponsor who shall:

(a) Assure that KRS 222.231, 908 KAR 1:150 through 908 KAR 1:260, 21 CFR 291.505(g), 21 CFR 1301.76, KRS Chapter 218A, 902 KAR 55:010 to 55:095 and this administrative regulation, are followed by the NTP;

(b) Have two (2) years documented experience in the treatment of addictions. The program sponsor shall be a certified chemical dependency counselor recognized by the Kentucky Credentialing Board, or a physician, nurse, physician assistant, or nurse practitioner certified by the respective licensing subspecialty, or shall have a minimum of a masters degree in the field of addictions or related field; and

(c) Assure that clients:

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1. Receive and sign written information describing all facets of the program in a manner that the client understands;

2. Have had the contents of the "Consent to Treatment with an Approved Narcotic Drug", Form FDA 2635 (7/93), communicated to them and voluntarily sign the consent to treatment;

3. Under eighteen (18) years of age, have parents or legal guardians of nonemancipated minors sign the consent to treatment;

4. Receive information on communicable diseases at admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years. Communicable diseases shall include tuberculosis, hepatitis, sexually transmitted diseases, and HIV/AIDS; and

5. Receive HIV/AIDS pretest, posttest counseling, and provide for voluntary HIV testing at admission or when clinically indicated thereafter.

(2) The program sponsor shall assure:

(a) That professional staff in the NTP shall maintain current credentials and that professional skills pertinent to their job descriptions shall be updated annually;

(b) That the laboratory performing the testing required under this regulation is approved by the SNA and is certified by the Substance Abuse and Mental Health Services Administration;

(c) That drug test results shall not be used as the sole criteria for administratively detoxifying a client from the NTP;

(d) That when drug testing results are used, presumptive laboratory results shall be distinguished from results that are definitive;

(e) That urine samples used for drug screening purposes shall be coded in a manner that ensures client confidentiality;

(f) That client attendance shall not be revealed to any person or agency without the specific written authorization of the client, or a valid court order.

(3) NTPs shall have a medical director who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 908 KAR 1:260 and this administrative regulation.

(4) NTPs may have a program physician who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 908 KAR 1:260 and this administrative regulation.

(5) The medical director may be the program physician.

(6) There shall be one (1) medical director or program physician on staff for every 300 clients, or fraction thereof, enrolled in a NTP.

(7) The responsibilities of the medical director or program physician(s) shall include:

(a) Assuring there is evidence of physiologic dependence on narcotics for all clients admitted to the NTP;

(b) Assuring a history of addiction, or that any exceptions to admissions criteria are approved by the SNA and documented in the client's record before the first dose is administered;

(c) Assuring that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

(d) Assuring that appropriate laboratory studies have been performed and have a documented review by the medical director or program physician;

(e) Documenting, signing, or countersigning all medical orders, within forty-eight (48) hours, that include the first dose of narcotic drug or other approved medications;

(f) Documenting, signing, or countersigning all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;

(g) Assuring that information on all communicable diseases is communicated to all clients as required; and

(h) Assuring that a review and cosignatures of all telephone or other verbal orders are documented within forty-eight (48) hours of the order.

(8) The medical director or program physician at the NTP shall:

(a) Supervise clinical staff responsible for preparation and administering of the approved controlled substances; and

(b) Assure compliance with program procedures and regulations;

(9) The medical director or program physician shall order all doses and all increases or decreases of doses of medications or drugs for the client, through the NTP.

(10) Any verbal orders shall be given to nursing or pharmacy staff and shall be cosigned by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(11) The medical director or program physician shall review all laboratory testing results required by the FDA, SNA, and testing indicated by the client's clinical record. Any specific additional laboratory testing shall be ordered by the medical director or program physician.

(12) The medical director or program physician, in determining the client's take-home medications, shall take into consideration the items addressed in 21 CFR 291.505(d)(6)(C)(iv)(B) and shall comply with Sections 10, 11, 12, 13 and 16 of this administrative regulation.

(13) NTPs shall provide dosing staff in sufficient numbers to meet the needs of the clients during dosing hours. Dosing staff shall:

(a) Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

(b) Not be dually assigned as primary client counselors.

(14) Programs shall provide counselors who shall have, at a minimum, a bachelors degree in a human services related field and a chemical dependency counselor certification (CCDC) from the Kentucky Certified Chemical Dependency Board or be actively engaged in the certification process.

(15) There shall be one (1) counselor for every forty (40) clients in the program.

Section 8. Physical Plant. (1) The building used for the NTP shall meet requirements in 21 CFR 1301.74(j) and shall have space for the following operations:

(a) The waiting area shall be large enough to accommodate the clients arriving for services.

(b) The waiting area shall be separated from the dosing area to permit each client privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary, shall accommo-

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date the dosing staff, and shall contain the following:

1. A stainless steel sink;
2. Hot and cold running water;
3. A refrigerator for dosing supplies; and
4. Pill-counting trays if tablets are being used.

(2) Security and floor plan of the dosing area may be unique to each program, but shall conform to the requirements in 21 CFR 1301.72.

(3) The NTP shall make arrangements for the facility to have two (2) restrooms which shall be handicapped accessible.

(4) The NTP shall assure that restrooms available to clients to provide urine specimens are secure, private, clean, and sanitary.

(5) The physical plant shall meet building, fire, safety, and health standards specified by state and local government laws and regulations.

(6) The physical plant shall be secured by a local security company approved by the DEA and the SNA.

(7) There shall be a minimum of two (2) panic buttons or similar devices for each NTP, one (1) in the reception area, and one (1) in the dosing area.

(8) There shall be a telephone with an outside line accessible in the dosing area.

(9) Internal security may be unique to each NTP and shall meet the requirements of 21 CFR 1301.74(b),(h),(i),(j),(k); 21 CFR 1301.91; 21 CFR 1301.92 and shall be installed only after consultation with the DEA Office and the SNA.

(10) Parking space at the clinic site shall be adequate to accommodate the maximum number of clients expected to be at the clinic site at one (1) time or have specific appointment schedules to prevent the influx of clients that would be disruptive or unsafe to the surrounding community.

Section 9. Security and Control. (1) The security and control segment of the NTP's assessment procedure shall be conducted quarterly by the program sponsor and dosing nurse supervisor or pharmacist who shall assure that the requirements of 21 CFR 1304.28 are met. Other items to be evaluated shall include:

(a) Security of the narcotic safe and the building perimeter shall be checked with a security company.

(b) The safe shall be locked at all times while staff are not obtaining or restocking controlled substances.

(c) Inventory reconciliation shall be conducted and all reconciliation documents shall be retained by the program for five (5) years.

(d) Five (5) percent or more inventory discrepancies shall be reported to the SNA and the DEA offices within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for client doses.

(f) Any discrepancies shall be reported to the SNA, to the DEA and FDA, and the Department for Health Services' Office of Drug Control, using the DEA 1305.12 (12/85) "Report of Theft or Loss of Controlled Substances" form, within forty-eight (48) hours of the event.

(g) A system shall be devised to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

(h) Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform to 21 CFR 1304.28 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(2) Utilization and effectiveness of delivered services shall be reviewed by the program sponsor and medical director annually for the following:

- (a) Treatment slot utilization and cost per slot;
 - (b) Staff-to-client ratio;
 - (c) Cost per counseling session; and
 - (d) Cost per client for other program services.
- (3) NTPs shall maintain written policies to assure the confidentiality

ty of all client records.

(4) Quarterly, the program sponsor shall review a ten (10) percent random sample of client records for the following information and assurances:

(a) Client signed the "Consent to Treatment with an Approved Narcotic Drug," Form FDA 2635 (7/93);

(b) Client signed a release of information form, developed by the NTP, which shall include:

1. Specific type of confidential information to be obtained or released; and

2. Specific dates that the release is to cover.

(c) When the program sponsor serves as a counselor then the medical director shall review ten (10) percent of the program sponsor's client records for the same information and assurances as cited above in paragraphs (a) and (b)1, 2 of this subsection.

(5) The NTP shall retain a copy of internal assessment documents on file, which shall be available for review by regulatory agencies for five (5) years.

(6) The NTP shall participate in the data collection system as addressed in 908 KAR 1:300.

Section 10. Admission and Readmission Policies. (1) The admitting physician for the NTP shall comply with the admission requirements of 21 CFR 291.505(d)(1).

(2) Exceptions to the admission requirements shall be those cited in 21 CFR 291.505(d)(1)(C)(iii). Programs shall adhere to the following for pregnant clients. A program shall not admit as a client any person who is pregnant, nor shall any program continue to treat any client who becomes pregnant, unless and until the medical director or program physician first determines and documents in the client's record the following:

(a) The client is medically able to participate in the program.

(b) The client shall be in the care of a qualified physician for her pregnancy and the physician is informed of the client's participation in the program. For the purpose of this subsection, "qualified physician" means a physician trained in the field of obstetrics.

(c) If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, the program physician shall refer any applicant who is pregnant or any admitted client who becomes pregnant to another physician for care during pregnancy and shall verify that she is actually under care of the physician to whom she was referred or another qualified physician.

(d) In the case of a pregnant client, the medical director or program physician shall ensure that appropriate arrangements have been made for the addiction-related medical care of both the client and the child following the birth of the child.

(e) Maintenance treatment dosage levels of pregnant clients shall be maintained at the lowest possible dosage level.

(f) The program shall ensure that the following services are available for pregnant addicts and are a part of the treatment plan:

1. Periodic physician consultation at least monthly;
2. Nutritional counseling;
3. Parenting training including newborn care, handling, health, and safety; and
4. Weekly full drug screen urinalysis;

(3) When a client applies for admission to a NTP the client shall be required to sign a release of information that authorizes a program to release or solicit information regarding the client's status in the NTP to another NTP.

(4) A client who has received treatment and later voluntarily detoxified may be readmitted to a NTP without evidence to support findings of current physiologic dependence, up to two (2) years after discharge if the NTP attended is able to document prior treatment of six (6) months or more, and the admitting medical director or program physician finds readmission to the NTP to be medically justified.

(5) Any client seeking readmission to a NTP after being adminis-

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tratively detoxified shall wait thirty (30) days prior to applying for readmission.

(a) If a client has been administratively detoxified two (2) times during a twelve (12) month period the client shall wait sixty (60) days before applying for readmission.

(b) The medical director or program physician shall find readmission to the NTP medically justified.

Section 11. Treatment Protocol. NTPs shall comply with the following treatment phase system to achieve the goals of reduced health problems, reduced criminal activity, increased productivity, stabilization of family life and eventual drug-free living.

(1) Entry phase. The first ninety (90) days of treatment all clients shall adhere to the following:

(a) Clients shall be dosed with methadone seven (7) days at the clinic site.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) Clients shall be provided HIV/AIDS education and provided or referred for HIV pretest counseling and voluntary HIV testing.

(d) Clients shall be oriented to appropriate twelve (12) step programs such as narcotics anonymous or alcoholics anonymous.

(e) During the entry phase the client shall provide an observed urine sample one (1) time per week on a random basis.

(f) There shall be documentation in the client record that treatment plans shall be reviewed and updated a minimum of every thirty (30) days for three (3) months, every ninety (90) days for six (6) months, and semiannually thereafter, if the client remains in the entry phase.

(g) The medical director or program physician shall sign the treatment plan.

(2) Phase one (1). In order for a client to enter phase one (1) the client shall not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for ninety (90) consecutive days.

(a) Once the client enters phase one (1) the client shall attend clinic six (6) times each week for observed ingestion of methadone and shall be eligible to receive a one (1) day take-home dose of methadone. Programs utilizing ORLAAM shall notify the SNA, in writing, of each client's ORLAAM dosing schedule prior to the first dose of ORLAAM.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) The client shall provide an observed urine sample on a random basis at least weekly. If the client remains in this phase over one (1) year, the schedule for random urine samples may be reduced to two (2) times per month.

(d) Clients shall be encouraged to attend an appropriate twelve (12) step program.

(e) There shall be documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to his treatment plan.

(f) The medical director or program physician shall sign the treatment plan.

(3) Phase two (2). In order for the client to enter phase two (2) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 180 consecutive days;

(b) Be pursuing gainful employment or vocational training or attending school or be engaged in volunteer work, or be attending parenting classes if they are a parent at home with children;

(c) Have a treatment plan to meet any special needs, including disabilities;

(d) Attend clinic five (5) times each week for observed ingestion of methadone and be eligible to receive up to two (2) consecutive days of take-home doses of methadone. Programs utilizing ORLAAM shall notify the SNA, in writing, of each client's ORLAAM dosing schedule prior to the first dose of ORLAAM;

(e) Provide an observed urine sample randomly on a monthly basis, or more frequently if their treatment plan requires;

(f) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(g) Be encouraged to attend appropriate self-help programs outside the clinic;

(h) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to the treatment plan; and

(i) Have their treatment plan signed by the medical director or program physician.

(4) Phase three (3). In order for the client to enter phase three (3) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 270 consecutive days;

(b) Have met the same entry criteria requirements as noted in phase two (2);

(c) Attend clinic three (3) times each week for observed ingestion of methadone and be eligible to receive up to two (2) consecutive days of take-home doses of methadone. Programs utilizing ORLAAM shall notify the SNA, in writing, of each client's ORLAAM dosing schedule prior to the first dose of ORLAAM;

(d) Provide an observed urine sample on a random basis, monthly, or more frequently if their treatment plan requires;

(e) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(f) Be encouraged to attend appropriate self-help groups outside clinic;

(g) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to their treatment plan; and

(h) Have their treatment plan signed by the medical director or program physician.

(5) Phase four (4). In order for the client to enter phase four (4), the client shall have successfully completed phase three (3) and adhered to the requirements of the maintenance treatment program for two (2) consecutive years.

(a) Clients shall be dosed at the clinic site two (2) days per week for observed ingestion of methadone and be eligible for three (3) take-home doses of methadone. Programs utilizing ORLAAM shall notify the SNA, in writing, of each client's ORLAAM dosing schedule prior to the first dose of ORLAAM.

(b) The number of counseling sessions provided during this phase shall be based on the clinical judgement of the program physician and program staff.

(c) Requirements in the area of urine sample schedules, and treatment plan reviews remain the same as in subsection (4) of this section.

(d) Prior to successful completion of phase four (4), a plan shall be developed which shall integrate the client to a drug-free treatment regimen for continued support.

(e) The medical director or program physician shall sign the treatment plan.

Section 12. Client Program Compliance. In order for a client to remain in a NTP and to successfully move through the treatment phases, clients shall be actively involved in the NTP by remaining in good standing at the clinic or risk being administratively detoxified. In

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those instances where clients have not complied with program policies:

(1) The client may be placed on a behavioral contract for a minimum of sixty (60) days during any individual program phase and shall lose all take-home dose privileges for sixty (60) days.

(2) If a client commits three (3) infractions, the medical director or program physician and staff may choose to move the client back in phases as part of the behavioral contract. The client shall lose all take-home privileges during the contract period.

(3) Following the commitment of any program infraction, the counseling staff shall assist the client in correcting the problem behavior and document this effort in the client's treatment plan.

(4) If the client continues to experience problems and breaks the behavioral contract, the client may be administratively detoxified based on the recommendation of the program physician and the program staff.

Section 13. Client Transfers. NTPs shall accept clients transferring from another program within the state, if:

(1) The client is currently in good standing with the NTP the client is transferring from; and

(2) The client is in compliance with readmission policies for clients who have been administratively detoxified.

(3) In order for the client to transfer to another NTP, the following requirement shall be met:

(a) The NTP that client is leaving shall forward all relevant client records to the program where the client is transferring.

(b) Any client who is transferring in good standing shall meet the admission criteria of this administrative regulation.

(c) Clients who are Kentucky residents and wish to transfer to another Kentucky based program shall be reviewed by the new program's admission program physician or medical director on an individual basis to determine their placement on the receiving program's client listing. The review shall determine the client's need, program placement availability, and the circumstances for the transfer request.

(d) Clients who are not Kentucky residents shall transfer to a Kentucky program as a new admission or "entry phase" as noted in Section 11(1) of this administrative regulation unless other phase levels are approved by the SNA.

Section 14. Client Appeal Procedures. Decisions regarding a client's treatment by staff shall be subject to appeal by the client. Each NTP shall:

(1) Develop an appeal procedure that shall be approved by the SNA; and

(2) Have procedures that include a provision that a central file of all client appeals be maintained at the NTP for review by the SNA.

Section 15. Program Waiver Process. A NTP may make an application to the SNA in order to seek waivers from any requirement of this administrative regulation.

(1) This application for a waiver shall:

(a) Be in the form of a letter to the SNA;

(b) Identify the specific sections of this administrative regulation for which a waiver is being sought; and

(c) Give the rationale for such a request.

(2) A copy of the waiver request and response shall become part of the client's permanent record, if applicable.

(3) Applications for waiver requests shall be mailed to: Kentucky State Narcotic Authority, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.

Section 16. Take-Home Doses. (1) Under emergency conditions a program may issue fourteen (14) consecutive days of take-home doses without notification of FDA. The NTP shall notify the SNA and request, in writing, an exception to dosing procedures prior to

administration of the first emergency dose. This request shall include:

(a) The number of take-home doses requested;

(b) The reason for the request; and

(c) The client's standing in program phases, adherence to program policies, and the total length of time the client has been enrolled at the NTP.

(2) The medical director or program physician may grant an exception to the criteria for take-home dosages for any of the following reasons subject to the limitations in this administrative regulation and written approval from the SNA which shall be filed in the client record:

(a) The client has a serious physical disability which would prevent frequent visits to the program facility.

(b) The client is subject to an exceptional circumstance such as acute illness, family crisis, or necessary travel, where hardship would result from requiring exact compliance with the step level schedule as noted in this administrative regulation. When a client must travel out of the program area, the medical director or program physician shall attempt to arrange for the client to receive his/her daily dosage at another program in lieu of increasing take-home dosages.

(c) The medical director or program physician shall not grant any exceptions during a calendar month which exceed three (3) exceptions or ten (10) percent of the number of patients enrolled in the program on the last day of the previous month, whichever is greater.

(d) The medical director or program physician shall document in the client's record the granting of any exception and the facts justifying the exception. Each program shall also maintain a separate record for all exceptions granted.

(e) No exception shall be granted to any client to receive total take-home dosages in excess of a six (6) day supply or 500 milligrams, whichever is less.

(f) Each NTP shall report to the SNA, in writing, the granting of each exception and the facts justifying each exception.

(g) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(3) A NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) step level on the schedule for take-home dosages if the client's urinalysis results disclose the unauthorized presence of methadone (too high or too low for the client's prescribed dosage level), cocaine, opiates, amphetamines, barbiturates, tetrahydrocannabinol, benzodiazepines, and any other drug(s) that has been determined by the NTP or SNA to be abused in that NTP's locality or any other drug(s) that may have been abused by the client twice or more in a sixty (60) day period.

(4) A NTP shall restrict a client's take-home dosage partially, by moving the client back on the take-home dosage schedule, if the NTP concludes that the client is no longer a suitable candidate or risk for take-home privileges as presently scheduled.

(5) A NTP shall revoke a client's take-home privileges for not less than three (3) months and shall require the client to ingest each dosage at the facility for any of the following reasons:

(a) The client's urinalysis discloses an absence of methadone, or methadone metabolite, and the medical director confirms the accuracy of such analysis. This shall not be applicable to clients whose daily dosage is ten (10) milligrams or less.

(b) The client is discovered to be misusing methadone, as defined in paragraph (e)3 of this subsection.

(c) The client attempts to register in another NTP.

(d) The client alters or attempts to alter a urinalysis.

(e) The client is not satisfactorily adhering to the requirements of the NTP by the following:

1. The client has not complied with all the rules of the NTP.

2. There is indication that the client has repeatedly used drugs improperly.

3. There is indication, including appropriate urinalysis results, that the client is misusing methadone. Misuse of methadone includes

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sharing, giving away, selling, or trading one's methadone dosage, or not ingesting it in accordance with methadone maintenance treatment program rules.

4. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use.

5. The client is not participating in an educational, vocational, or home-making activity.

(6) A client whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

(a) Phase one (1) by satisfactory adherence for at least thirty (30) days.

(b) Phase two (2) by satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges.

(c) Phase three (3) by satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges.

(d) Phase four (4) by satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges.

(e) This section shall not be used to circumvent the requirements of this administrative regulation. No client shall be advanced to a phase level pursuant to this section unless he has previously been at that phase level after having satisfied the requirements of this administrative regulation.

(7) When the NTP fails to comply with the requirements in Sections 6, 7, 8, 9, 10, 11, 12, 13 or 16 of this administrative regulation, the SNA may order a NTP to suspend all or part of the take-home dosage program for a period of thirty (30) days. The SNA shall notify the NTP in writing outlining the reasons for the suspension prior to any suspension as follows:

(a) The NTP shall submit a plan of correction to the SNA within ten (10) days of receipt of the SNA notification.

(b) If the NTP does not make the corrections in the time specified due to circumstances approved by the SNA, but the NTP has responded within the ten (10) day time period, the SNA may extend the suspension for up to a second thirty (30) day period.

(c) If the NTP does not make the necessary corrections or does not submit an acceptable plan of correction with the SNA within the time frame specified in paragraph (a) of this subsection, the SNA shall suspend the NTP's take home program until the necessary corrections have been made.

(d) If the NTP is determined by the SNA to not comply with Sections 6, 7, 8, 9, 11, 10, 11, 12, 13 or 16 of this administrative regulation and is serving clients who meet the requirements in Sections 10 and 11 of this administrative regulation, the SNA may restrict the NTP's take-home procedures to the provision of emergency take homes according to the requirements of Section 16 of this administrative regulation. This restriction shall be in effect on a client-by-client basis until the NTP has taken corrective actions that bring the program into compliance with Sections 6, 7, 8, 9, 10, 11, 12, 13 and 16 of this administrative regulation.

(8) Maintenance treatment shall be discontinued within two (2) continuous years after the treatment is begun unless, based upon the clinical judgement of the medical director or program physician and staff which shall be recorded in the client's record by the medical director or program physician, the client's status indicates that the treatment should be continued for a longer period of time because discontinuance from treatment would lead to a return to opiate dependency.

(9) Client status relative to continued maintenance treatment shall be reevaluated at least annually after two (2) continuous years of maintenance treatment and documented in the client's record by the medical director or program physician or maintenance treatment shall be terminated.

(10) Documentation of the justification for continued maintenance treatment required by this administrative regulation shall indicate the client's progress, or lack thereof, and future expectations as required by this administrative regulation.

(11) Each NTP shall submit in its protocol a specific plan for schedule termination of maintenance treatment indicating an average period of maintenance before the scheduled termination.

(12) The termination plan shall include dosage schedules, information on counseling, and any other patient support which will be provided during withdrawal.

(13) Scheduled withdrawal shall be under the immediate direction of the medical director or program physician and shall be individualized.

(14) A client may voluntarily terminate participation in a NTP even though termination may be against the advice of the NTP.

(15) If the medical director or program physician determines that the client's continued participation in the program creates a physically-threatening situation for the staff or other clients, the client's participation may be terminated immediately.

(16) A client's participation in a NTP may be involuntarily terminated for cause.

(17) If a NTP utilizes disciplinary proceedings which include involuntary termination for cause, the program shall include in its protocol reasons and procedures for involuntarily terminating a client's participation in the program. The procedures shall provide for:

(a) Explanation to the client of when participation may be terminated for cause;

(b) Client notification of termination;

(c) Client's right to hearing; and

(d) Client's right to representation.

(18) If the NTP elects not to terminate for cause, the protocol shall state that clients shall not be involuntarily terminated for cause except as provided in subsection (15) of this section.

(19) Except as noted in subsection (15) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

(a) The medical director or program physician deems it clinically necessary to terminate participation sooner and documents why in the client's record; or

(b) The client requests in writing a shorter termination period.

Section 17. Client Rights. In addition to the client rights cited in 908 KAR 1:200, Section 1, the following shall apply:

(1) Clients shall have the right to voluntary detoxification from the NTP.

(2) The client rights shall be posted in conspicuous places in the facility.

(3) The client rights shall be signed by the individual client attesting the client rights have been explained in such a manner that they are understood. This signed copy shall be maintained in the client's permanent medical record.

(4) Decisions regarding a client's treatment by staff may be subject to appeal by the client.

(5) Each NTP shall develop an appeal procedure that shall be approved by the SNA and shall include the following:

(a) Each appeal procedure shall contain a detailed description of the pretermination fair hearing procedures. The appeal procedure shall provide that a client has a right to a pre-termination fair hearing in all cases of involuntary termination from the program for cause where continued participation in the program does not create a physically threatening situation for staff or other clients. The procedure shall require:

1. Identification of reasons for termination, as stated in the program rules, which may include:

a. Polydrug abuse;

b. Diversion of methadone;

c. Violence or threat of violence to program staff or other clients in the program; or

d. Multiple registration.

2. Written notification to the client of pending termination, containing:

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- a. Reasons for termination; and
- b. Explanation of right to pretermination fair hearing, which shall explain to the client that rights shall be exercised within forty-eight (48) hours of written notice.
3. Provision for continuance of client's treatment status pending decision upon hearing;
4. Explanation of the client's rights during the hearing to:
 - a. Be represented at the hearing by a person or attorney of their choice;
 - b. Call witnesses on their behalf, who need not be under oath; and
 - c. Examine witnesses presented by the NTP.
5. Release of medical information in the client's file to the client or the client's representative at least forty-eight (48) hours prior to the hearing;
 - a. Medical information requests by the client shall be in the form of a signed consent to release of information.
 - b. Medical information to be released to the client or client's representative shall be provided by the physician in charge of the client.
 - (b) The appeal procedure shall state whether the client is entitled to a hearing before a panel or before a single hearing officer. If the procedure states that the client is entitled to a hearing before a panel, a single hearing officer may not be substituted for the panel without the consent of the client. In the case of a hearing before a panel, a majority vote of the panel shall be necessary to terminate a person from the NTP.
 - (c) The NTP shall select the hearing officer or panel from impartial persons not directly involved with the client's care.
 - (d) A hearing shall be scheduled within seven (7) working days from the time the client requests a hearing.
 - (e) Unless the program procedures require a higher standard of proof, a client's participation in a program shall be terminated for cause only after the hearing officer or panel finds by a preponderance of the evidence presented that the reason stated in the notice justifies termination.
 - (f) The hearing officer or panel shall render a decision not later than the first working day following the hearing. The NTP shall keep a permanent record of the proceeding. The permanent record of the proceedings may be a tape recording. The decision shall be made in writing and shall be based solely on the evidence presented at the hearing. The decision shall include a summary of the proceedings and the formal findings and conclusions of the hearing officer or panel.
 1. A copy of the hearing decision shall be provided to the client.
 2. Copies of all written materials, including all evidence introduced at the hearing, shall be retained for one (1) year.
 - (g) A client may appeal an adverse action of a hearing officer or panel by the following:
 1. The client may appeal the decision by filing an appeal with the Office of the Secretary, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) working days of the decision.
 2. The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.
 - (6) All client appeals shall be maintained at the NTP for review by the SNA for two (2) years.

Section 18. Protocol for the Change of a NTP Location and the Protocol for Establishment of a Medication Station. The protocol shall be current, detailed, specific, and complete to permit evaluation by the SNA and to provide a basis for compliance inspections or surveys.

(1) If a NTP voluntarily decides to change its location or establish a medication station, the program shall notify, in writing, the DEA, FDA, the SNA and the Division of Licensing and Regulation within the cabinet within ninety (90) days of the proposed relocation. The written

request to relocate shall include the following information:

- (a) The reason for the relocation;
 - (b) The relocation site;
 - (c) The proposed date of the relocation;
 - (d) Indicate any program changes that may occur with the relocation; and
 - (e) If the NTP is within ninety (90) miles of the original site, the NTP shall provide the following:
 1. Any dosing procedural changes; and
 2. Any drug distribution problems which may occur due to the relocation.
 - (f) A medication station may be opened no closer than forty-five (45) miles and no further than ninety (90) miles to the main NTP.
 1. The medication station shall obtain its supply of approved controlled substance from the stocks of the main NTP.
 2. The medication station shall provide the following services:
 - a. Dosing; and
 - b. Urine screen collection.
 3. The program sponsor shall develop a system to prevent clients from dosing at the main NTP and the medication station.
 4. Any services provided at the medication station other than those listed above shall have prior approval by the FDA and SNA.
 - (2) The FDA, the DEA, and the SNA shall agree that the NTP may establish a medication station or relocate to the proposed relocation site. Written approval shall be forwarded to the NTP.
 - (3) If a NTP voluntarily decides to close its operation, it shall notify the SNA, the DEA, FDA and the Division of Licensing and Regulation within ninety (90) days before the planned closure of the program.
- Section 19. Monitoring of NTPs. (1) The SNA shall monitor NTPs to assure the health and safety of program clients and the protection of the community at large. Monitoring visits shall be conducted annually, or more frequently if indicated. The SNA may:
- (a) Discontinue all take-home doses of any approved controlled substance used in narcotic treatment and detoxification, on a state wide or program basis; or
 - (b) Discontinue the utilization of any drug approved for use in narcotic treatment programs.
 - (2) Focused, unannounced monitoring visits may be conducted more frequently and may occur in conjunction with the FDA and the DEA.
 - (3) Monitoring shall include:
 - (a) Inspection of the NTP licensing status;
 - (b) Inspection of the status of all applicable staff licenses and certificates;
 - (c) Inspection of the status of the NTP'S FDA, DEA, and state licenses;
 - (d) Inspection of the NTP's security which shall include:
 1. Building security, perimeter and internal; and
 2. Security of staff procedures in receipt of narcotic drug, storage of narcotic drug, and handling of the drug in preparation and dosing functions;
 - (e) Inspection of the records maintenance, the inventory control procedures, and the internal inventory reconciliation procedures;
 - (f) Inspection of the procedures the program has in place to reduce the likelihood of drug diversion by program clients and staff; and
 - (g) A random sample of doses prepared for administration may be pulled for quantitative analysis and the SNA shall submit to the program sponsor a receipt for any doses taken for analysis.
 - (4) Client records shall be reviewed for the following:
 - (a) Client signed consent to treatment with a controlled substance before the first dose was administered;
 - (b) Conformity with 21 CFR 291.505(d)(3)(i) requirements for minimum medical evaluations;
 - (c) Conformity with 21 CFR 291.505(d)(2)(ii), Sections 6(7) and

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11(1)(e), (2)(c), (3)(e), (4)(d) of this administrative regulation for urine drug screening requirements;

(d) Conformity with client record that when the urine drug screen is positive for use of unapproved drugs, or is negative for the approved controlled substance, the client is counseled and suitable therapeutic action is taken by the treatment team, and the client's take-Sandra G. Pullen, Staff Assistant

Transportation Cabinet home doses have been discontinued for sixty (60) days. However, the urine drug screen shall not be used as the sole or primary reason for dismissing the client from the NTP; and

(e) Treatment plans have been developed and have been signed by the medical director or program physician in accordance with this administrative regulation;

(f) All physician orders for medications, doses, and dose changes and other treatments have been signed by the medical director or program physician within forty-eight (48) hours of the order's receipt;

(g) No medications are administered without the physician's orders;

(h) The SNA shall monitor for all other FDA, DEA, or SNA administrative regulations; and

(i) Records shall be reviewed for compliance with all treatment phases and waiver requests and approvals.

Section 20. Penalties. Penalties may be issued by the SNA to NTPs that have violated FDA and DEA requirements, and this administrative regulation as follows:

(1) When a monitoring visit reveals regulatory violations, the SNA shall, within ten (10) working days issue a written report, which also shall be submitted to the FDA and DEA, with a time frame of thirty (30) days for the NTP to submit a plan of corrective action.

(2) If a plan of corrective action has been submitted within the thirty (30) days and is acceptable, the SNA shall notify the NTP in writing.

(3) A follow-up visit to verify that corrective action has been made may be performed by the SNA.

(4) If the NTP has not filed a plan of corrective action within thirty (30) days after receipt of the report, the NTP shall be notified that its license shall be suspended for a period not to exceed six (6) months or revoked.

(5) Upon notification of suspension or revocation, the NTP may appeal the suspension or revocation in accordance with Section 21 of this administrative regulation.

(6) The SNA shall immediately suspend or revoke any narcotic treatment license in cases of emergencies affecting the health and safety of the client population or the community as a whole.

(7) The grounds which justify the immediate suspension or revocation of a license shall be as follows:

(a) Take-home doses that fall outside this administrative regulation without specific FDA, DEA, or SNA approval prior to issuance of the take-home dose;

(b) Labeling or dosing narcotic drug with a concentration that differs from the actual concentration in the container;

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the administrative regulations;

(d) Discrepancies in the inventory reconciliation greater than five (5) per cent;

(e) Continued dosing of clients prior to completion of the intake procedures, including physical exam, except under the most unusual emergency circumstances, which shall be recorded in the client's permanent record;

(f) Evidence in the client's record that the physician is not in control of the client's treatment;

(g) Consistent dosing of clients before the consent to treatment with controlled substances has been signed by the client;

(h) Consistent failure to conduct the required urine drug screening procedures on all drugs listed in Section 6(7) of this administrative regulation;

(i) Failure to comply with Section 8(5) of this administrative regulation; and

(j) Revocation of licensure pursuant to 908 KAR 1:150 through 908 KAR 1:126.

(8) The SNA shall notify the FDA monitor, DEA, and the Department for Health Services Office of Drug Control at the time revocation or suspension is taken in accordance with subsection (4) of this section.

(9) Except in cases of emergencies affecting the health and safety of the client population or the community as a whole, an appeal shall stay any decision to suspend or revoke a license to operate pending final decision of the secretary.

Section 21. Appeals. If the SNA takes action to deny, suspend, or revoke a NTP license, the SNA shall notify the NTP in writing stating the reasons for the adverse actions and the NTP's right to appeal.

(1) If the NTP believes an action by the SNA is unfair, without reason, or unwarranted, the NTP may appeal the action in writing to the Secretary, Cabinet for Health Services, Fourth Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receipt of notice of action from the SNA.

(2) Upon receipt of the appeal, the secretary, or his designee, shall notify the NTP in writing within fifteen (15) days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(4) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of the negative action. The decision of the hearing officer shall be final. The NTP shall be notified in writing of the decision of the hearing officer.

(5) If a NTP, whose license has been suspended or revoked pursuant to Section 20(6) and (7) of this administrative regulation, requests a hearing, the cabinet shall conduct the hearing within five (5) working days of receipt of the request from the NTP. The hearing may be continued at the request of the NTP.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the client population or the community as a whole.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, the NTP shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the client population or the community as a whole, the license of the NTP shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

(6) If suspension or revocation of the license is upheld, the secretary's, or his designee's, notification shall specify the date by which the NTP shall close.

(7) A NTP that continues to operate after the closing date established by the secretary shall be subject to legal action by the cabinet as provided by law.

Section 22. Material Incorporated by Reference. (1) "Consent to Treatment with an Approved Narcotic Drug" form FDA 2635 (7/93); "Report of Theft or Loss of Controlled Substances" form DEA 1305.12 (12/85); US Official Order Forms-Schedules I & II DEA form 222 (10/92) are hereby incorporated by reference.

(2) Copies of the incorporated material may be inspected, copied

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or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 23. Compliance for Currently Operating NTPs. NTPs currently operating at the time this administrative regulation becomes effective shall have ninety (90) days to come into compliance with this administrative regulation.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 23, 1996

FILED WITH LRC: January 30, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: All programs who offer an approved controlled substance as a narcotic treatment modality.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented to the extent from the public comments received: No public comments have been received.

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

1. First year following implementation: Compliance with DEA and FDA standards, quarterly reporting and standard record keeping will be required.

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

(3) Effects on the promulgating administrative body: Reviewing for compliance and record keeping for all narcotic treatment programs.

(a) Direct and indirect cost or savings:

1. First year: No additional direct or indirect costs or savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reviewing for compliance and record keeping for all NTPs.

(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 shall be used to implement the enforcement of this administrative regulation.

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

(a) Geographic area in which administrative regulation will be implemented: No comments have been received.

(b) Kentucky: No comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because they are not available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: The benefits to this administrative regulation include the reduction of AIDs and HIV among the intravenous drug using population in Kentucky, as well as establishing greater consistency in program operation policies across narcotic treatment programs, with reduction in diversion of program sponsored approved controlled substances which has been seen to increase law enforcement demands and the

deaths of clients and nonclients in other states.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, the spread of AIDs and other infectious diseases among the intravenous drug using population may increase across Kentucky, as well as the breakdown in consistency of program operations of narcotic treatment programs, and the increase in the need for law enforcement oversight.

(c) If detrimental effect would result, explain detrimental effect: Maintenance and detoxification treatment would not be adequately regulated in the Commonwealth.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied Tiering was not used since the administrative regulation will be applied in a like manner for all individuals or entities affected by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 CFR Parts 291 and 1301.

2. State compliance standards. Establishes the State Narcotic Authority; outlines the state alternative distribution system for controlled substance used in the treatment of narcotic addiction; outlines the application procedures to operate a narcotic maintenance program; outlines the organization and administration policies; outlines the programs personnel policies; Outlines the programs physical plant requirements; outlines the programs security and control procedures; outlines the programs admission and readmission policies; outlines the programs required treatment protocol; outlines the client rights; outlines the monitoring of the programs; outlines the penalties imposed by the state narcotic authority on programs for noncompliance of FDA, DEA, and state regulations; outlines the programs appeal procedures.

3. Minimum or uniform standards contained in the federal mandate. 21 CFR 291.501: Narcotic drugs in the maintenance treatment of narcotic addiction; 21 CFR 291.505: conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970; 21 CFR 1301: Procedures governing the registration of manufacturers, distributors, and dispensers of controlled substances pursuant to Sections 1301 through 1304 of the Act (21 USC 821-824) are set forth generally by those Sections and specifically by the Sections of this part.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Section 1. State administrative regulation does not permit interim maintenance.

Section 3. The state alternative distribution system requires that approved NTPs obtain their supplies of approved controlled substances from a designated state operated facility.

Section 4. The federal regulation requires agencies to submit information regarding staff and security of the building and the drug. The state administrative regulation requires agencies to submit a detailed protocol which includes such information as letters of support from various agencies within the geographic location, first and subsequent years' budgets, detailed information about staffing qualifications and staffing patterns, criminal background checks, documentation of cooperative arrangements with local jails, hospitals, and community mental health centers. The agencies also must provide documentation of hearing procedures to guarantee the rights

of clients.

Section 5. The SNA will not grant an application to any entity who has been convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years. The SNA will not grant an application to any entity who poses risk to health and safety of the public. The SNA will review past written compliance and monitoring reports from other SNAs, DEA, and FDA. This is stricter than the federal regulations.

Section 6. The federal regulation does not require criteria for the use of ORLAAM. The state administrative regulation requires agencies to submit policies which document how ORLAAM will be dispensed. In addition, agencies must submit documentation to assure compliance with the treatment phases listed in Section 10 of the state regulation. The federal requirements do not include treatment phases. NTPs are required to have stricter drug screening policies than the federal regulations require. Finally, the state administrative regulation requires clinics to be open seven (7) days a week, except for designated holidays. This is stricter than the federal regulations.

Section 7. The state administrative regulation requires stricter credentialing for the program sponsor, the medical director and/or the program physician, dosing personnel, and counseling staff. This is stricter than the federal regulations.

Section 8. The state administrative regulation requires that the dosing area be large enough to accommodate staff and equipment and the security of the drug. The federal regulation does not stipulate the size of the dosing area. The state administrative regulation also requires that the clinic have two (2) handicapped accessible restrooms which is not required by the federal regulation. Finally, the state administrative regulation requires adequate parking space for clients expected to be at the clinic at one time. This is stricter than the federal regulations.

Section 9. The state administrative regulation requires the agencies to quarterly evaluate the security and inventory reconciliation. The agencies must also assess the effectiveness of the utilization of the delivery services. The state administrative regulation requires that the staff to client ratio be forty (40) to one (1), which is greater than the federal requirements. The agency must also annually review ten (10) percent of the client records for compliance. Finally, the state administrative regulation requires agencies to participate in the data collection system as addressed in 908 KAR 1:300. This is stricter than the federal regulations.

Section 10. The state administrative regulation requires the program to ensure that the following services are available for pregnant addicts and are a part of the treatment plan: parenting training including newborn care, health, and safety, weekly full drug screen urinalysis: Any client seeking readmission to a NTP after being administratively detoxified shall wait thirty (30) days prior to applying for readmission. If a client has been administratively detoxified two (2) times during a twelve (12) month period the client shall wait sixty (60) days before applying for readmission. These requirements are stricter than the federal requirements.

Section 11. The state administrative regulation incorporates a five (5) phase system of treatment that outlines the counseling, take-home dosages, urinalysis screening, orientation to 12-step programs, vocational rehabilitation, job training, behavioral contracts, infractions, transfer of clients from within and outside the state, client appeal procedures, waiver procedures, the use and misuse of the approved controlled substance, SNA's ability to suspend all take-home dosages, client record documentation of the continued use of the approved controlled substance after two (2) years of treatment, client's voluntary termination from a NTP and client's involuntary termination from a NTP. These requirements are stricter than the federal requirements.

Section 12. The client program compliance requirements are stricter than those addressed in the federal requirements.

Section 13. NTP client transfer policies are stricter than the

federal requirements. Those clients transferring from another state must start at the "entry phase" in Kentucky NTPs.

Section 14. This section requires policies and procedures for clients to use when filing an appeal or grievance when their rights have been violated. These requirements are stricter than the federal requirements.

Section 15. NTPs must request all waivers from the SNA prior to any action which is out of compliance with these administrative regulations.

Section 16. This section stipulates the take-home procedures that all NTPs must follow and is stricter than the federal regulations for take-home dosage procedures.

Section 17. All NTPs must develop an appeal procedure which protects the client's rights and includes pretermination fair hearing procedures. This is stricter than the federal requirements.

Section 18. This section stipulates what protocol an NTP must follow to change a NTP location, close a NTP, or establish a medication station. This is stricter than the federal regulations.

Section 19. This section stipulates the monitoring procedures to be used by the SNA, time parameters of the on-site visits, reports issued as a result of the on-site visits, responses by the NTPs to any noncompliance issues cited as a result of the monitoring visit, and subsequent actions by the SNA. These requirements are stricter than the federal requirements.

Section 20. This section outlines the actions to be taken by the SNA when on site visits reveal violations of federal and state regulations. These requirements are stricter than the federal requirements.

Section 21. This section outlines the specific rights of NTPs to appeal the decisions or citations of the SNA and further outlines the procedures for administrative hearings and other actions that may be in the interest of the NTP. The federal regulation includes no appeal process other than the through the courts.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. For all standards listed in number 4 above the justification for these stricter standards is: the SNA is seeking to protect the health and safety of the clients and staff of the NTPs and the health and safety of the community at large and to reduce the possible diversion of the approved controlled substances to the absolute minimum. The SNA also wishes to ensure the quality of treatment and program operations by the NTPs. Research of NTP operations in the states in the southeast region have revealed that minimal standards (FDA) have resulted in trafficking of the controlled substances outside the confines of the NTPs. Some of the trafficking has resulted in the death of nonaddicted persons, has reduced the credibility of narcotic treatment, and has resulted in the threat, real or imagined, of the removal of this treatment modality.

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ADMINISTRATIVE REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on February 5, 1996.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended)**

201 KAR 20:215. Contact hours, recordkeeping and reporting requirements for renewal of licensure.

RELATES TO: KRS 314.011(12) ~~[(44)]~~, 314.073, 314.991(1) to (3)
STATUTORY AUTHORITY: KRS 314.073, 314.131(1), (2), 314.991(1) to (3)

NECESSITY AND FUNCTION: KRS 314.131(1), (2), and 314.073 provide that the board shall establish continuing education requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing education for nurses. [For administration of the continuing education requirement, it is necessary for the board to develop procedures and standards.]

Section 1. Definition. "Earning period" means November 1 through October 31 of a current licensure period.

Section 2. (1) A licensee [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) A licensee who attends [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) A [It is the responsibility of the] licensee shall [to] determine whether a continuing education activity is offered by an approved provider.

Section 3. ~~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 4. ~~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 its 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) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply [A licensee or applicant for licensure by renewal who is determined to be in noncompliance] with continuing education requirements, he 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 imposed by the board pursuant to KRS 314.991.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if: [The provisions of paragraph (a) of this subsection shall not apply to cases in which:]

1. A [~~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 5. ~~4-~~ (1) Successful completion of a postlicensure academic course~~[e]~~ at a college, university or postsecondary vocational institution shall qualify as a continuing education activity [~~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 report~~[e]~~ shall be submitted upon request of the board.

(b) The board may request 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 shall equal~~[e]~~ fifteen (15) contact hours.

(b) One (1) quarter hour of academic credit shall equal~~[e]~~ 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 that is:

1. Applicable to nursing practice; and

2. Appropriate for the nurse engaged in clinical practice, administration, education, or research; and

3. [~~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 6. ~~6-~~ (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

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- (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 shall:

- (a) ~~Shall~~ Qualify it as having been obtained from an approved provider for the licensee [~~individual~~] requesting the review; and
(b) Be [~~be~~] limited to the particular offering upon which the request for individual review is based.

Section 7. Incorporation by Reference. (1) [~~(4)(a)~~] "Application for Individual Review (1992)" is incorporated by reference.

(2) This document [~~(b)(1)~~] may be reviewed, inspected, or copied at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. [~~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

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (As Amended)

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

RELATES TO: KRS 61.874(3), 314.041(5), 314.042(3), (6), 314.051(2) [~~(3)~~], 314.071(1), (2), 314.073(7) [~~(4), (6)~~], 314.161, 200 KAR 1:020

STATUTORY AUTHORITY: KRS 61.874(3), 314.131, 314.161

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:

- (a) Applications for licensure;
Applications [~~of~~] for registration;
(c) **Licensure** [~~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:

- (a) The current examination fee [~~as~~] required by the national council of state boards of nursing; and
(b) [~~in addition to the board~~] Application for licensure and retake fees pursuant to Section 1 of this administrative regulation and subsections (1) and (5) of this section.

(3) A nurse shall pay the current examination fee required by the national council of state boards of nursing, and the fees established by the board for application for licensure and retake, if the nurse:

- (a) Is licensed in another state, United States territory, or country;
(b) Submits an application for licensure in Kentucky as a registered nurse, or a licensed practical nurse; and
(c) Is required to take or retake the licensure examination.

~~[(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.]~~

(4) [~~(5)~~] Applicants retaking the licensure examination shall submit:

- (a) The [~~Submit~~] fee for retake prior to each time examination is taken; and
(b) A [~~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.

(5) A graduate [~~(6) Graduates~~] of a foreign school[s] of nursing shall be responsible [~~assume responsibility~~] for:

- (a) Costs incurred to submit credentials translated into English;
(b) Commission on graduates of foreign nursing schools certifies;
(c) Immigration documents; and
(d) Other documents needed to verify that the graduate has met Kentucky [~~meeting~~] licensure requirements.

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Section 4. ~~Except as provided by [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

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (As Amended)

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 224.60-116 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

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

(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.

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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 4:115, 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.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (As Amended)

501 KAR 3:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS ~~[43A-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) ~~[(17)]~~ "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.

(2) ~~[(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.

(3) ~~[(16)]~~ "Deck" means the secure overhead area of the jail which is part of the security perimeter.

(4) ~~[(6)]~~ "Department" means the Department of Corrections.

(5) ~~[(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.

(6) ~~[(14)]~~ "Dormitory" means an area equipped for housing not less than three (3) persons or more than thirty-six (36) ~~sixteen (16)~~ persons.

(7) ~~[(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.

(8) ~~[(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.

(9) ~~[(8)]~~ "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.

(10) ~~[(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.

(11) ~~[(2)]~~ "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(12) ~~[(3)]~~ "Jail staff" means deputy jailers, and other personnel involved in the supervision, custody, care or treatment of prisoners in the jail.

(13) ~~[(6)]~~ "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(14) ~~[(15)]~~ "Penal type" means furnishings approved by the Department of Corrections.

(15) ~~[(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.

(16) ~~[(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.

(17) ~~[(7)]~~ "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

FILED WITH LRC: December 14, 1995 at 9 a.m.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (As Amended)

501 KAR 3:140. Inmate rights.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS ~~[43A-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.

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(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 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 those calls are made on 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.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (As Amended)

501 KAR 7:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS ~~43A.360~~ 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) ~~[(2)]~~ "Jailer" means the duly elected or appointed official charged with the overall responsibility of administering the center.

(2) ~~[(5)]~~ "Medical authority" means the person or persons licensed and certified to provide medical care to residents in the center.

(3) ~~[(4)]~~ "Resident" means any person approved for placement in the center by the jailer in accordance with the definition of a restricted custody center.

(4) ~~[(7)]~~ "Resident living area" means a group of rooms which provide housing for the resident population.

(5) ~~[(1)]~~ "Restricted custody center" means [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 and pretrial inmates who have been approved by the court 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.]~~

(6) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

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(7) [(3)] "Staff" means deputy jailers and other personnel involved in the supervision, custody, care, or treatment of prisoners in the center.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1995

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DEPARTMENT OF CORRECTIONS Division of Local Facilities (As Amended)

501 KAR 7:050. Physical plant.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS ~~43A.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 and provides 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 and renovation standards.

~~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 2. [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 3. [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 4. [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~~

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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 5. ~~[6.]~~ Waiver of Compliance. (1) The Department of Corrections 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 6. ~~[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.

DEPARTMENT OF CORRECTIONS Division of Local Facilities (As Amended)

501 KAR 13:010. Life safety issues.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS ~~[43A.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 or ~~[f]~~ 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.

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- (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 and may be obtained, copied or inspected in the offices of the Division of Local Facilities, Department of Corrections, Frankfort, Kentucky during business hours of 8 a.m. to 4:30 p.m. (eastern standard time), Monday through Friday.
- (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 as offered [equivalent to that defined] by the American Red Cross and the office of Corrections Training, Department of Corrections.

- (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

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EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended)

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 in Section 8 of this administrative regulation.

~~[(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 recom-

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mended 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, **whichever occurs first.**

(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 (1) 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 **if employed in any public or nonpublic accredited school.**

Section 6. Payments to Committee Members. Within the provisions of the budgetary act, the Office of Teacher Education and Certification shall contract with the local school district, or make other

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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 to the resource teacher. 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 intern committee members in accordance with legal requirements;

(c) Compliance with specified procedures for the timing, content, reporting, and signing of classroom observation forms, intern 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. Incorporation by Reference. (1) "Guiding and Assessing Teacher Effectiveness: A Handbook for Kentucky Teacher Internship Program Participants," June 1995 edition, is incorporated by reference.

(2) Copies of the Handbook may be inspected, or obtained 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 9. 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.

CABINET FOR HEALTH SERVICES Department for Health Services Division of Maternal and Child Health (As Amended)

902 KAR 19:010. Kentucky Birth Surveillance Registry.

RELATES TO: KRS 211.655, 211.660, 211.670
STATUTORY AUTHORITY: KRS 211.660

NECESSITY AND FUNCTION: KRS 211.655 establishes the Kentucky Birth Surveillance Registry based on the need to provide information on the incidence, prevalence, and trends of congenital anomalies, stillbirths and disabling conditions; provide information as to possible causes; and develop preventive strategies to reduce their incidence and the secondary complications associated with them. This administrative regulation is promulgated to establish uniform procedures for collection of data for the registry.

Section 1. Definitions. (1) ~~[(13)]~~ ~~[(12)]~~ "Agent" means any entity with which the department may contract pursuant to carrying out the duties of the registry and may designate to act on the behalf of the registry to edit or analyze data from hospitals.

(2) ~~[(11)]~~ "Board" means the Kentucky Health Policy Board.

(3) ~~[(10)]~~ "Cabinet" means the Cabinet for Health Services ~~[Human Resources]~~.

(4) ~~[(9)]~~ ~~[(8)]~~ "Coding and transmission specifications" means the technical directives concerning technical and technological matters, including codes and data for uniform provider entry into particular character positions of the UB-92 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions issued by the Health Policy Board pursuant to administrative regulation 909 KAR 1:070 or, where not specified by the Health Policy Board, as are delineated in the UB-92 Training Manual.

(5) ~~[(8)]~~ "Department" means the Department for Health Services.

(6) ~~[(7)]~~ "Division" means the Division of Maternal and Child Health, the administrator of the Kentucky Birth Surveillance Registry, located within the Department for Health Services.

(7) ~~[(6)]~~ "Hospital" means acute care hospitals licensed under the provisions of KRS Chapter 216B.

(8) ~~[(5)]~~ "Hospitalization" means the inpatient medical episode identified by a patient's birth, admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode.

(9) ~~[(4)]~~ ~~[(3)]~~ "ICD-9 Code" means the diagnosis code specifications under the International Classification of Diseases, in current usage, required for reporting diagnoses and diseases to all U.S. Public Health Service and Health Care Financing Administration programs.

(10) ~~[(2)]~~ ~~[(1)]~~ "Medical record" means the patient's actual medical record maintained by the hospital's medical record department.

(11) ~~[(10)]~~ "Record" means the documentation of a hospitalization in the format of a UB-92 regardless of whether constituted as a paper form or on a computer-readable electronic medium.

(12) ~~[(9)]~~ "Registry" means the Kentucky Birth Surveillance Registry.

(13) ~~[(8)]~~ ~~[(7)]~~ "UB-92" means the billing form identified by the Federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations. ~~[The UB-92 Training Manual is incorporated by reference to this administrative~~

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regulation.]

Section 2. Data Collection. (1) Hospitalization records. [~~Beginning January 1, 1996~~] Hospitals shall document on a UB-92 record each hospitalization they provide on at least all inpatients up to the age of five (5) years with diagnoses of a congenital birth anomaly or disabling condition as defined by the department and included in Section 8 of this administrative regulation, and from these records shall provide to the registry not less than the data specified in Section 9 of this administrative regulation.

(2) Access to records. KRS 211.660(4) provides the registry or its agent with permission to have access to the medical records of any patient meeting the criteria in subsection (1) of this section.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the registry as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the registry on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the registry before a patient is discharged or before the record is sufficiently final that it could be submitted to a payor for billing.

(2) Transmission of records.

(a) Data submitted to the registry shall be uniformly completed and formatted according to coding and transmission specifications.

(b) Hospitals that have the capacity shall submit data on computer-readable electronic media.

(c) All hospitals shall provide backup security against accidental erasure or loss of the data until any incomplete or inaccurate records identified by the registry have been corrected and resubmitted.

(d) Any data submitted by mail shall be by certified mail or other traceable carrier (i.e., United Parcel Service).

(e) Any hospital that submits records in the form of paper copies shall either deliver the copies to the registry's reporting agent, or send them in secure packaging by mail postmarked no later than the due date.

Section 4. Data Submission Timetable. Quarterly submissions. Hospitals shall submit data at least once for each calendar quarter. A quarterly submission shall contain data from all records of patients admitted on or after the effective date of this administrative regulation [January 1, 1996], which during that quarter became final as specified in Section 3(1) of this administrative regulation [subsection (1) of this section], and shall be submitted to the registry not later than forty-five (45) days after the last day of that quarter.

(1) If the 45th day falls on a weekend or holiday, the submission due date shall become the next following working day.

(2) The first required data submission under this administrative regulation shall be no earlier than sixty (60) days following publication of the registry's coding and transmission specifications, including the file layout for electronic submission. [~~for quarterly data collected after January 1, 1996.~~]

Section 5. Data Corrections. (1) Editing. The following UB-92 data fields from Section 9 of this administrative regulation shall ~~will~~ be edited by the registry upon receipt to ensure completeness and validity of the data for further processing: patient name, insured's name.

(2) Time permitted for corrections. The registry shall allow hospitals thirty (30) days in which to submit corrected copies of initially submitted data the registry identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the postmarked date of the registry's mailed notice informing the hospital that corrections are required.

(b) Hospitals shall submit corrected data by either electronic transmission or postmarked mailing within the thirty (30) days.

Section 6. Working Contacts. (1) Beginning January 1, 1996 and annually thereafter, each hospital which is required by this administrative regulation to submit data shall report by letter to the registry the names and telephone numbers of a designated working contact person and a back-up person to facilitate technical staff follow-up in dealing with daily working details by employees of the registry or its agent. A hospital's designated contact and backup may not be the chief executive officer unless no other person(s) employed by the hospital has the required technical expertise.

(2) If the chief executive officer, designated contact person or back-up person changes during the year, the name of the replacing person shall be reported immediately to the registry.

Section 7. Required Reporting Conditions. The data which are submitted from the hospital to the registry shall be at least for those patients, from birth to five (5) years of age, for whom any reported diagnoses includes the following ICD-9 codes:

(1) All congenital anomalies codes - 740-759. (Examples: microcephaly 742.1; macrocephaly 742.4; upper GI anomalies 750; lower GI anomalies 751; gastroschisis 756.7; chromosome anomalies 758.)

(2) Dwarfism not elsewhere classified - 259.4.

(3) Metabolic/storage disorders - 270-279*. *Excluding codes 274, 276 and 278.

(4) Hereditary hemolytic anemia - 282.

(5) Neurologic disorders of brain and cord - 334-335.

(6) Cerebral palsy - 343.

(7) Omphalocele - 553.1.

(8) Teratogens (noxious influences) (include all 760.7 subcategories, current .70-.79) - 760.7.

(9) Hemolytic disease of the newborn - 773.

(10) Infant of diabetic mother - 775.0.

(11) Seizures - 779.0; 780.3.

(12) Failure to thrive - 783.4.

(13) Small for gestational age - 764.0.

Section 8. Required Data Elements. UB-92 data. Hospitals shall ensure that each copy of UB-92 data submitted to the registry contains at least the following data elements as provided on the UB-92 form. Asterisks identify elements that shall not be blank and shall conform to coding and transmission specifications.

UB-92 Field #	Element Name
*5	Federal Tax Number
*12	Patient Name
13	Patient Address
*14	Birth Date
*15	Sex
*17	Admission/Start of Care Date
*23	Medical Record #
*58	Insured's Name
59	Patient Relationship
60	Certificate/SSN/Health Insurance Claim/ID Number
*67	Principal Diagnosis Code
68-75	Other Diagnosis Codes (Up to 8)
*82	Attending Physician Unique Identification Number or Alternate Number.

Section 9. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, the ~~current~~ UB-92 Training Manual is herein incorporated by reference.

(2) This item may be inspected or copied at the Kentucky Birth

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Surveillance Registry, Division of Maternal and Child Health,
Department for Health Services, at 275 East Main Street, Frankfort,
Kentucky 40621, during regular business hours of 8 a.m. to 4:30
p.m..

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 5, 1996

FILED WITH LRC: January 5, 1996 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (As Amended)

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, **EO 95-79**

NECESSITY AND FUNCTION: The Cabinet for **Families and
Children** [~~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
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 administra-
tively 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 em-
ployed 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.

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(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

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(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 **Families and Children** [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

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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 (a)3d ~~[(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 **Families and Children** ~~[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 **Families and Children** ~~[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 which has accrued since January 1, 1994 as determined by paragraph (a)3d ~~[(d)]~~ of this subsection.

~~(h) [(d)]~~ The Cabinet for **Families and Children** ~~[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 (a)3d ~~[(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.

ADMINISTRATIVE REGISTER - 1610

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR WRITTEN COMMENTS RECEIVED

PERSONNEL CABINET
(Amended After Hearing)

101 KAR 2:100. Leave administrative regulations.

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

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

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

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

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

(b) A full-time employee shall ~~must~~ have worked more than half of the workdays in a month to qualify for annual leave. ~~An~~ ~~Each~~ employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned.

(c) In computing months of total service for the purpose of earning annual leave, only ~~the~~ ~~these~~ months:

1. For which a full-time ~~an~~ employee earned annual leave shall be counted; or

2. ~~[in the case of a part-time employee, only those months]~~ In which a part-time ~~the~~ employee worked at least 100 hours shall be counted.

(d) ~~If [in these cases where]~~ an employee is changed from part time to full time, ~~the~~ ~~these~~ months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.

(e) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, unless the ~~[except where such]~~ dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) ~~If [in these cases where]~~ an employee is changed from full time to part time, ~~the~~ ~~these~~ months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service.

(g) A part-time employee ~~[Employees serving on a part-time basis]~~ who works less than 100 hours a month shall not be entitled to annual leave.

(2)(a) Annual leave may be accumulated and carried forward from one (1) calendar year to the next as provided in this paragraph ~~[not to exceed the following maximum amounts]:~~

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

(b) ~~[However,]~~ Leave in excess of the ~~[above maximum]~~ amounts specified in paragraph (a) of this subsection shall be converted to sick leave at the end of the calendar year~~;~~ or upon retirement. ~~[Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.]~~

(c) The amount of annual leave that may be accumulated, and the amount of annual leave that may be converted to sick leave, shall be determined by computing months of service as provided by subsection (1)(a) of this section.

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

(4)(a) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with an employee's request. ~~[the request of employees.]~~

(b) An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) An employee shall be ~~[Employees are]~~ charged with annual leave for absence only on days ~~[up]~~ on which ~~he~~ ~~they~~ would otherwise work and receive pay.

(6)(a) Annual leave shall accrue if ~~[only when]~~ an employee is working or on authorized leave with pay.

(b) Annual leave shall not accrue if ~~[when]~~ an employee is on educational leave with pay.

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

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

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

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

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

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

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for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

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

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

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2) of this section.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next day, shall retain his accumulated leave in the receiving agency.

(d) The effective date of a separation shall be the last work day.

(e) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation ~~shall [may, at the discretion of the appointing authority,] be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 2(2) of this administrative regulation.~~

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

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

Section 2. Sick Leave. (1)(a) An [Each] employee in the state service, except an emergency, per diem and part-time employee[s] who works less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service.

(b) An employee shall [must] have worked more than half of the workdays in a month to qualify for sick leave with pay.

(c) An [Each] employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) [Employees serving on] A part-time employee [basis] who works at least 100 hours a month shall accumulate sick leave with

pay at the rate of one (1) working day for each month of service.
(e) An [Each] employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave was [is] earned.

(2)(a) A full-time employee who completes [employees complet-ing] 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(b) In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only the [these] months for which an employee earned sick leave shall be used.

(c) If [In these cases where] an employee is changed from part time to full time, the [these] months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service.

(d) A part-time employee[e] who works at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service.

(e) In computing months of total service for a part-time employee[s] who works at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only the [these] months in which the employee worked at least 100 hours shall be used.

(f) If [In these cases where] an employee is changed from full time to part time, the [these] months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service.

(g) The total service shall [must] be verified before the leave is credited to the employee's record. [Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.]

(h) A former employee who is rehired after having been dismissed for cause from state service shall receive credit for service prior to the dismissal, if the dismissal was not due to a violation of KRS 18A.140, 18A.145, or 18A.990.

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

(4)(a) Sick leave shall accrue if [only when] an employee is working or on authorized leave with pay.

(b) Sick leave shall not accrue if [when] an employee is on educational leave with pay.

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

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

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

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

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

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph shall be [is] limited to three (3) days, and may be extended for good cause [or a reasonable extension] at the discretion of the appointing authority.

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

(7)(a) An appointing authority shall grant sick leave without pay

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for ~~the duration of [see long as]~~ an employee's impairment [is disabled] by sickness, or illness, or pregnancy, if [and] the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(c) ~~If an [When the] employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. [The employee shall inform the employer that reasonable accommodation is necessary and shall provide upon request supporting documentation from a certified professional. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority only if the appointing authority has been unable to place the employee in a vacant, budgeted position, with the same agency, for which the employee qualifies. The employee shall be given priority consideration for such vacant position, if he is capable of performing its essential functions with or without reasonable accommodation. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.]~~

(d) If the reasonable accommodation is necessary, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(e) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay; and
2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and
3. Is unable to return to work; or
4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualifies and is capable of performing its essential functions with or without reasonable accommodation; and
5. The appointing authority has been unable to place him in such a vacant position.

(f) An employee who has been resigned under this subsection shall retain reinstatement privileges that were accrued during his service in the classified system.

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

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

(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and
2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits. [When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.]

(c) An employee who has exhausted paid leave shall [not] qualify for state contribution for life insurance and health benefits if [unless] he works for more than half of the workdays in a month.

(d) If an [the] employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying

the total cost of the state contributions and any employee contributions for such benefits.

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

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

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

(11)(a) An employee[e] shall be credited for accumulated sick leave if he is:

1. [when] Separated by proper resignation, layoff, retirement; or
2. [when] Granted leave without pay.

(b) A former employee[s] who is [are] reinstated or reemployed shall be credited with the [have] unused sick leave balance credited to him upon separation. [balances revived upon appointment and placed to their credit.]

(12)(a) If an [in cases of] absence is due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used [in order] to maintain regular full salary.

(b) If paid sick leave is used, Workers' Compensation pay benefits shall be assigned [back] to the state for the [whatever] period of time the [an] employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that Workers Compensation Benefits were assigned.

(13) Application for sick leave.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an [in cases of] emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay.

(c) If he is ill, [in all cases of illness,] an employee shall [be obligated to] notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall [may] be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

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

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

Section 3. Family Leave. (1) ~~[Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked or been on paid leave at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family leave without pay. On the first day of January of each year thereafter] [Every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding [calendar] year shall qualify for twelve (12) weeks of family leave [without pay].]~~

(a) An employee in state service shall qualify for twelve (12) weeks of family leave if he has:

1. Completed twelve (12) months of service; and
2. Worked at least 1,250 hours in the preceding year.

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(b) Unused family leave shall not be carried over from year to year. This section shall be construed in a manner consistent with the Family and Medical Leave Act of 1993, 20 USC 2601, et seq. and 29 CFR Part 825.

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

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

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

(3) An employee who has requested family leave [under the conditions for which family leave is authorized] shall be notified of the family leave designation, in writing, within two (2) business days of the date on which the request was [is] made. [An appointing authority shall grant family leave, upon the receipt of a completed application from an employee.]

(b) An employee shall request family leave as far in advance as reasonable.

(c) An employee who requests family leave may reserve ten (10) days of paid sick leave.

(d) The appointing authority shall require the employee to utilize accumulated sick and [s] annual [and compensatory] leave prior to granting unpaid family leave, provided that the employee may request to reserve ten (10) days of paid sick leave **and annual**. The amount of available family leave shall be reduced by the amount of paid leave used. [A completed application means the request form and the medical certification required by subsection (4) of this section.] [The employee shall make the request [application] as far in advance of the start of the leave as reasonable. Family leave shall be granted:

~~(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child under an agreement with an agency of the Commonwealth or other state government. An appointing authority may require a couple in the employ of an agency to limit the total amount of family leave to twelve (12) weeks where leave is sought in connection with the birth, adoption or placement of a child;~~

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

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

~~(e) [(d)] An appointing authority shall grant family leave because of:~~

~~1. A serious health condition, of the employee, that makes the employee temporarily unable to perform the essential functions of his position;~~

~~2. The birth of a child of an employee, adoption of a child by an employee, or the placement of a foster child under an agreement with an agency of the Commonwealth or other state government;~~

~~3. The care of a newborn child of the employee, adoption of~~

~~a child by the employee, or placement of a foster child with the employee, within one (1) year of the birth, adoption or placement;~~

~~4. The care of an employee's spouse, parent, child, or other family member who has:~~

~~a. Resided with the employee for not less than thirty (30) days prior to the request; and~~

~~b. A serious medical condition.~~

~~(f) Leave for a couple employed by the same agency for the birth, adoption, or placement of a child shall be limited to twelve (12) weeks.~~

~~1. A medical condition shall be deemed a serious medical condition if it:~~

~~a. Requires the employee to provide inpatient care or continuing treatment by a health provider; and~~

~~b. Renders the employee incapable of performing the duties of his position.~~

~~2. A child shall include a person who is:~~

~~a. Under eighteen (18) years old; and~~

~~b. Is incapable of self-care because of a mental or physical disability.~~

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

~~(4)(a) An employee who requests family leave for a serious medical condition shall supply a certification on "Family And Medical Leave Request Form" from a health care provider that states that the:~~

~~1. Employee is in need of care; or~~

~~2. Employee is needed to care for a family member; or~~

~~3. Presence of the employee would be beneficial to the family member in need of care.~~

~~(b) If an employee requests intermittent leave, or leave on a reduced leave schedule due to a serious medical condition of the employee or family member, he shall supply a certification from a licensed health care provider that states:~~

~~1. That leave is medically necessary; and~~

~~2. Specifies the expected duration and schedule of the leave.~~

~~(c) A licensed health care provider shall be a:~~

~~1. Doctor of medicine;~~

~~2. Doctor of osteopathy;~~

~~3. Podiatrist;~~

~~4. Dentist;~~

~~5. Clinical psychologist;~~

~~6. Optometrist;~~

~~7. Chiropractor;~~

~~8. Nurse practitioner;~~

~~9. Nurse midwife; or~~

~~10. Certified Christian Science practitioner.~~

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

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employed on a regular basis by the agency.

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

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

~~(6) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill family member or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.~~

(5) An appointing authority may temporarily reassign an employee to an available alternative position with equivalent pay and benefits, if the:

(a) Employee requests intermittent leave, or a reduced work schedule to care for a seriously ill family member or because of his own serious medical condition;

(b) Need for the leave is reasonably based on planned medical treatment;

(c) Employee is qualified for the position; and

(d) Temporary assignment better accommodates recurring periods of leave than the employee's regular job.

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

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

(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and

2. Elects to use paid leave to qualify for state contributions for life insurance and health benefits. ~~[When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.]~~

(c) An employee shall utilize his family leave days consecutively if he:

1. Is unable to work; and

2. Elects to use family leave as the sole qualification for state contributions for life insurance and health benefits. ~~[When an employee is unable to work, and elects to use family leave as the sole qualification for the state contributions for life insurance and health benefits, he shall utilize his family leave days consecutively.]~~

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

(e) Except as provided by paragraph (f) of this subsection, an

employee shall reimburse the Commonwealth for state contributions paid on his behalf if he:

1. Uses family leave as the sole qualification for state contributions for life insurance and health benefits; and

2. Fails to return to work for thirty (30) calendar days after his family leave is exhausted. ~~[An employee who uses family leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family leave is exhausted, shall reimburse the Commonwealth for state contributions paid on behalf of the employee.]~~

(f) The employee shall not be required to reimburse the Commonwealth if the reason the employee does not return is [due to]:

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

2. Other circumstances beyond the employee's control, such as: ~~[- Examples of other circumstances beyond the employee's control are where]~~

a. A relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; or

b. The employee is laid off while on leave.

(g) [Examples of other] Circumstances [which] are not beyond the employee's control if:

1. [are where] An employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or

2. A parent decides [parent's decision] not to return to work to stay with a newborn child.

(h) [(f)] An employee[-] on family leave[-] shall [continue to] be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made [(f)] by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make an [any] employee contribution[s] for life insurance and health benefits and shall be notified by the agency, in writing, fifteen (15) calendar days before benefits expire.

(i) If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. Life insurance and health benefits shall be restored thirty (30) calendar days after his return to work. Effective the first day of the employee's return, benefits shall be restored to the same level of coverage that existed when leave commenced. [If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.]

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

Section 4. Court Leave. (1) An employee shall be entitled to leave of absence from duties during his scheduled working hours[-] without loss of time or pay for the [that] amount of time necessary to:

(a) Comply with subpoenas by a [any] court, or administrative agency or body of the federal or state government or any political subdivision thereof;

(b) [to] Serve as a juror or a witness, unless [except in cases where] the employee [himself] or a member of his family is a party to the [court or administrative] proceeding.

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(2) Court [This] leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work. ~~Court leave shall not be required to be reported by an employee for attendance at a hearing or trial when attendance is a part of assigned duties.~~

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1)(a) ~~It shall be the responsibility of the~~ Appointing authorities shall comply with ~~the~~ overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA).

(b) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments.

(d) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 ~~200~~ hours.

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

(3) Upon separation from state service, an employee shall ~~se~~ be paid for all unused compensatory leave at the greater of his:

(a) ~~their~~ Regular hourly rate of pay; or

(b) ~~at the~~ Average regular rate of pay for the final three (3) years of employment.

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

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

(6) An employee deemed to be "nonexempt" by the provisions of [in relation to] the FLSA shall be compensated for [all] hours worked in excess of forty (40) per week as provided by paragraphs (a) to (c) of this subsection. ~~[in accordance with the following provisions:]~~

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

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

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

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

(7)(a) ~~(8)~~ An employee except one who is in a policy making

position~~;~~ may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay.

(b) If the appointing authority or his designee approves the payment, ~~then~~ an employee's leave balance shall be reduced accordingly.

(8)(a) An employee who is not ~~(9)~~ ~~[All employees, except those who are]~~ in a policy making positions, shall be paid for fifty (50) hours at his ~~their~~ regular hourly rate of pay upon accumulating at the end of the pay period, 240 ~~200~~ hours ~~or more~~ of compensatory leave.

(b) The employee's leave balance shall be reduced accordingly.

(9) ~~(10)~~ If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

(a) Exceed the number of normally prescribed hours of duty;
and

(b) Do not exceed:

1. The maximum amount of compensatory time that is permitted; and

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

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

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

Section 6. Military Leave. (1) Upon request, an ~~[Any]~~ employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties ~~[upon request therefor]~~, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in a ~~any one~~ ~~(1)~~ federal fiscal year.

(2) The ~~[and any such]~~ absence shall not be charged to leave.

(3) Absence that exceeds ten (10) working days in a federal fiscal year shall ~~[in excess of this amount will]~~ be charged to ~~[as]~~ annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of ~~the~~ ~~[an]~~ employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall ~~may~~ be paid in a lump sum, if requested by ~~[at the request of]~~ the employee, upon receiving this leave.

Section 7. Voting Leave. (1) An employee ~~[All employees]~~ who is ~~are~~ eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) The ~~[Such]~~ absence shall not be charged against leave.

(3) An employee ~~[Employees]~~ who is ~~are~~ not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) ~~[In addition to leaves as above provided.]~~ An appointing authority may grant special leave for

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education or training. [without pay for a period or periods not to exceed thirty (30) working days in any calendar year.]

(2)(a) If approved by the commissioner, an appointing authority may grant a leave of absence for continuing education or training.

(b) Leave may be granted for a period not to exceed twenty-four (24) months.

(c) Leave may be granted with or without pay.

(d) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that:

1. Relate to the employee's work; and

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

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

(4) ~~[An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. An employee placed on special leave for investigative purposes may elect to use accumulated leave during the period of the investigation. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.]~~

(a) If approved by the commissioner, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(b) Leave shall not exceed thirty (30) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee:

1. He shall be made whole for the period of the leave; and
2. Records relating to the investigation shall be purged from agency and department files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

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

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

(b) An employee shall utilize his paid leave days consec-

utively if he:

1. Is unable to work; and

2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits. [When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.]

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

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

Section 9. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for his absence [therefor] to his supervisor immediately.

(2) Unauthorized and[er] unreported absence shall be considered absence;

(a) Without leave; and [and deduction of pay may be made for each period of such absence][--Such]

(b) Absence may constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

ROBERT S. PETERS, Secretary
PAUL E. PATTON, Governor

APPROVED BY AGENCY: February 5, 1996

FILED WITH LRC: February 5, 1996 at 11 a.m.

PERSONNEL CABINET
(Amended After Hearing)

101 KAR 3:010. Leave administrative regulations for unclassified service.

RELATES TO: KRS 18A.155, 61.394, PL 103-3
STATUTORY AUTHORITY: KRS 18A.155, 18A.195, PL 103-3
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these administrative regulations shall be approved by the Governor. This administrative regulation adopts and applies 101 KAR 2:100 governing leave policies to the unclassified service. [In practice, the leave administrative regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.]

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

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

(b) A full-time employee shall ~~must~~ have worked more than half of the workdays in a month to qualify for annual leave. ~~An [Each]~~ employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned.

(c) In computing months of total service for the purpose of earning annual leave, only ~~the [these]~~ months:

1. For which ~~a full-time [an]~~ employee earned annual leave shall be counted; or

2. ~~[in the case of a part-time employee, only those months]~~ In which ~~a part-time [the]~~ employee worked at least 100 hours shall be counted.

(d) ~~If [in those cases where]~~ an employee is changed from part time to full time, ~~the [these]~~ months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.

(e) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, ~~unless the [except where such]~~ dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) ~~If [in those cases where]~~ an employee is changed from full time to part time, ~~the [these]~~ months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service.

(g) ~~A part-time employee [Employees serving on a part-time basis] who works less than 100 hours a month shall not be entitled to annual leave.~~

(2)(a) Annual leave may be accumulated and carried forward from one (1) calendar year to the next ~~as provided in this paragraph. [not to exceed the following maximum amounts:]~~

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

(b) ~~[However,] Leave in excess of the [above maximum] amounts specified in paragraph (a) of this subsection shall be converted to sick leave at the end of the calendar year; or upon retirement. [Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.]~~

(c) The amount of annual leave that may be accumulated, and the amount of annual leave that may be converted to sick leave, shall be determined by computing months of service as provided by subsection (1)(a) of this section.

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

(4)(a) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with an employee's request [the request of employees].

(b) An employee who makes a timely request for annual leave

shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) An employee shall be [Employees are] charged with annual leave for absence only on days [up]on which he [they] would otherwise work and receive pay.

(6)(a) Annual leave shall accrue ~~if [only when]~~ an employee is working or on authorized leave with pay.

(b) Annual leave shall not accrue ~~if [when]~~ an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise ~~moved [changed]~~ from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

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

(9) An employee who is [Employees] eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

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

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

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

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

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

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2) of this section.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the

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next day, shall retain his accumulated leave in the receiving agency.

(d) The effective date of a separation shall be the last work day.

(e) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation ~~shall [may, at the discretion of the appointing authority,]~~ be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 1(2) of this administrative regulation.

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

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

Section 2. Sick Leave. (1)(a) ~~An [Each]~~ employee in the state service, except an emergency, per diem and part-time employee[s] who works less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service.

(b) An employee shall [must] have worked more than half of the workdays in a month to qualify for sick leave with pay.

(c) An [Each] employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) [Employees serving on] A part-time employee [basis] who works at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service.

(e) An [Each] employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave was [is] earned.

(2)(a) A full-time employee who completes [employees completing] 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(b) In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only the [these] months for which an employee earned sick leave shall be used.

(c) If [In these cases where] an employee is changed from part time to full time, the [these] months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service.

(d) A part-time employee[s] who works at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service.

(e) In computing months of total service for a part-time employee[s] who works at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only the [these] months in which the employee worked at least 100 hours shall be used.

(f) If [In these cases where] an employee is changed from full time to part time, the [these] months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service.

(g) The total service shall [must] be verified before the leave is credited to the employee's record. [Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140,

~~18A.145, or 18A.990.]~~

(h) A former employee who is rehired after having been dismissed for cause from state service shall receive credit for service prior to the dismissal, if the dismissal was not due to a violation of KRS 18A.140, 18A.145, or 18A.990.

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

(4)(a) Sick leave shall accrue ~~if [only when]~~ an employee is working or on authorized leave with pay.

(b) Sick leave shall not accrue if [when] an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay ~~if [when]~~ the employee:

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

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

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

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

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph ~~shall be [is]~~ limited to three (3) days, and may be extended for good cause [or a reasonable extension] at the discretion of the appointing authority.

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

(7)(a) An appointing authority shall grant sick leave without pay for the duration of [se long as] an employee's impairment [is disabled] by sickness, or illness, or pregnancy, if [and] the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his[her] duties with or without reasonable accommodation.

(c) If an [When the] employee has given notice of his ability to resume his duties, the appointing authority shall [may] return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. [An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.]

(d) If the reasonable accommodation is necessary, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(e) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay; and

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

3. Is unable to return to work; or
4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualifies and is capable of performing its essential

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functions with or without reasonable accommodation; and

5. The appointing authority has been unable to place him in such a vacant position.

(f) An employee who has been resigned under this subsection shall retain reinstatement privileges that were accrued during his service in the classified system.

(8) An employee[e] eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

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

(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and

2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits. [~~When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.~~]

(c) An employee who has exhausted paid leave shall ~~not~~ qualify for state contribution for life insurance and health benefits ~~if~~ ~~unless~~ he works for more than half of the workdays in a month.

(d) If an [the] employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

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

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

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

(11)(a) An employee[e] shall be credited for accumulated sick leave **if he is:**

1. [when] Separated by proper resignation, layoff, retirement; or

2. [when] Granted leave without pay in excess of thirty (30) working days.

(b) A former employee[s] who **is** [~~are~~] reinstated or reemployed shall **be credited with the** [~~have~~] unused sick leave **balance credited to him upon separation.** [~~balances revived upon appointment and placed to their credit.~~]

(12)(a) If an [In cases of] absence **is** due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used [~~in order~~] to maintain regular full salary.

(b) If paid sick leave is used, Workers' Compensation pay benefits shall be assigned [~~back~~] to the state for **the** [~~whatever~~] period of time **the** [~~an~~] employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that Workers' Compensation Benefits were assigned.

(13) Application for sick leave.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except **for an** [~~in cases of~~] emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay.

(c) If he is ill, [~~in all cases of illness,~~] an employee **shall** [~~is obligated to~~] notify his immediate supervisor or other designated person. Failure, **without good cause,** to do so in a reasonable period

of time **shall** [~~may~~] be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

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

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

Section 3. Family Leave. It shall be the responsibility of the appointing authority to administer family leave in compliance with the Federal Family and Medical Leave Act of 1993 and regulations promulgated thereunder found in 29 CFR Part 825. Each employee in a nonexempt, nonpolicy making position shall be entitled to family leave as set out in 101 KAR 2:100, Section 3.

Section 4. Court Leave. **(1)** An employee shall be entitled to leave of absence from duties during his scheduled working hours[-] without loss of time or pay for **the** [~~that~~] amount of time necessary to:

(a) Comply with subpoenas by **a** [~~any~~] court, or administrative agency or body of the federal or state government or any political subdivision thereof;

(b) [to] Serve as a juror or a witness, **unless** [~~except in cases where~~] the employee [~~himself~~] or a member of his family is a party to the [~~court or administrative~~] proceeding.

(2) Court [~~This~~] leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. **(1)(a) [It shall be the responsibility of the]** Appointing authorities **shall comply with** [~~to administer~~] the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act (FLSA).

(b) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments.

(d) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be **240** [~~200~~] hours.

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

(3) Upon separation from state service, **an** employee **shall** [~~is~~] be paid for all unused compensatory leave at the greater of **his:**

(a) [their] Regular hourly rate of pay; or

(b) [at the] Average regular rate of pay for the final three (3) years employment.

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

(5) [~~An appointing authority or his designee may direct an employee to take accumulated compensatory time off from work to~~

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maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave. Notice must be in writing specifying the number of hours to be taken and the pay period in which the hours must be used.

(6) An employee deemed to be "nonexempt" by the provisions of [in relation to] the FLSA shall be compensated for all hours worked in excess of forty (40) per week as provided by paragraphs (a) to (c) of this subsection. [in accordance with the following provisions:]

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

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

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

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

(7) [(8)] An employee except one who is in a policy making position [r] may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay.

(b) If the appointing authority or his designee approves the payment, [then] an employee's leave balance shall be reduced accordingly.

(8) [(9)](a) An employee who is not [All employees, except those who are] in a policy making positions, shall be paid for fifty (50) hours at his [their] regular hourly rate of pay upon accumulating, at the end of the pay period, 240 [200] hours [or more] of compensatory leave.

(b) The employee's leave balance shall be reduced accordingly.

(c) [(b)] An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 240 [200] hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency.

(9) [(10)] If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

(a) Exceed the number of normally prescribed hours of duty; and

(b) Do not exceed:

1. The maximum amount of compensatory time that is permitted; and

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

(10) [(11)] Compensatory leave used during the [same] work week in which it is earned shall [does] not constitute [r] hours worked [r] for computing paid overtime or time and one-half (1 1/2) compensatory time.

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

Section 6. Military Leave. (1) Upon request, an [Any] employee who is an active member of the United States Army Reserve, the

United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties [upon request therefor], to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in a [any one (1)] federal fiscal year.

(2) The [and any such] absence shall not be charged to leave.

(3) Absence that exceeds ten (10) working days in a federal fiscal year shall [in excess of this amount will] be charged to [a] annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the [an] employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall [may] be paid in a lump sum, if requested by [at the request of] the employee, upon receiving this leave.

Section 7. Voting Leave. (1) An employee [All employees] who is [are] eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) The [Such] absence shall not be charged against leave.

(3) An employee [Employees] who is [are] not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

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

(2)(a) If approved by the commissioner, an appointing authority may grant a leave of absence for continuing education or training.

(b) Leave may be granted for a period not to exceed twenty-four (24) months.

(c) Leave may be granted with or without pay.

(d) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that:

1. Relate to the employee's work; and

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

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

(4)(a) If approved by the commissioner, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(b) Leave shall not exceed thirty (30) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on

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leave.

(d) If the investigation reveals no misconduct by the employee:

1. He shall be made whole for the period of the leave; and
2. Records relating to the investigation shall be purged from agency and department files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation. [An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.]

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

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

(b) An employee shall utilize his paid leave days consecutively if he:

1. Is unable to work; and
2. Has elected to use paid leave to qualify for state contribution for life insurance and health benefits. [When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.]

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

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

Section 9. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for his absence [therefor] to his supervisor immediately.

(2) Unauthorized and [for] unreported absence shall be considered absence:

(a) Without leave; and

(b) Absence may constitute grounds for disciplinary action. [and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action].

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

ROBERT S. PETERS, Secretary
PAUL E. PATTON, Governor

TRANSPORTATION CABINET Office of Minority Affairs (Amended After Hearing)

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.

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(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 Chapter 6 [++0+], 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, 601 High Street, Frankfort, Kentucky 40622. The telephone number is (502)564-3604. 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

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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) Deputy Secretary of the Transportation Cabinet or his designee;

(d) Director, Division of Construction or his designee;

(e) ~~(d)~~ Director, Division of Highway Design or his designee;

(f) ~~(e)~~ Audit Manager, Internal Audit Branch or his designee;

(g) ~~(f)~~ Executive Director, Office of General Counsel or his designee; and

(h) ~~(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) ~~(9)~~ 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.

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(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 predetermination 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 predetermi-

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nation 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 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 Transpor-

tation 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) 564-3604.]~~

Section 13. Additional Program Guidelines. 13 CFR 121~~[-1-121-3]~~ as effective on March 1, 1996 ~~[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 ~~[45.37]~~ 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 Chapter 6 ~~[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

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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 ~~Chapter 6 [4-104]~~, 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
JAMES C. CODELL, III, Deputy Secretary
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: February 12, 1996

FILED WITH LRC: February 13, 1996 at noon

TRANSPORTATION CABINET (Amended After Hearing)

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 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, if one exists, 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;

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(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.

(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

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: February 12, 1996

FILED WITH LRC: February 13, 1996 at noon

TRANSPORTATION CABINET (Amended After Hearing)

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

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(1) 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 incorporat-

ed 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 the Division of Professional Services 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 [executed and the selected consultant receives a notice of approval for payment from the Division of Professional Services] as set forth in 600 KAR 6:070.

J.M. YOWELL, P.E., State Highway Engineer

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: February 12, 1996

FILED WITH LRC: February 13, 1996 at noon

TRANSPORTATION CABINET (Amended After Hearing)

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 implementing 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;

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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 quantify [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 production [labor] rates to be applied to the work units to determine person[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 production [labor] rates to be applied to the work units to determine person[man]-hours for each task.

(c) For environmental services, a scope of work for each task and corresponding person[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 production [labor] rates to be applied to the work units to determine person[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 production [labor] rates to be applied to the work units to determine person[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

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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 production [labor] rates to be applied to the work units to determine person[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 limitations in 600 KAR 6:080, Section 2, may be suspended and the allowable overhead rate may exceed 150 percent if:

1. The director of the Division of Professional Services recommends approval [approves];

2. The State Highway Engineer recommends approval [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;

(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;

4. ~~Subconsultant costs;~~

5. ~~Operating margin;~~ and

6. ~~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

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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 person[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 comply with the provisions of KRS 45A.825(10) ~~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

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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 ~~person~~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 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 9. [8-] Cancellation of Contract. (1) Each professional

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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 effective date of cancellation of the contract as specified by the terms of the contract.

(4) The cabinet shall be liable for a demobilization fee equal to ten (10) percent of the remaining balance of the contract not to exceed \$25,000.

Section 10. [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 11. [4-] 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
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: February 12, 1996
FILED WITH LRC: February 13, 1996 at noon

TRANSPORTATION CABINET (Amended After Hearing)

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 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) Except for the items set forth in subsection (3)(c) and (q) of this section, the firm shall provide the auditor with copies of the items set forth in subsection (3) of this section.

(b) The auditor may review the items set forth in subsection (3)(c) and (q) of this section but shall not remove them from the premises of the firm.

(5) 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) \$90,000 [~~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:

(a) \$100,000 per year for a principal or partner of a firm; or

(b) \$90,000 per year for a nonprincipal or nonpartner of a firm;

(4)(a) The lobbying portion of dues paid to organizations shall not be allowed in the computation of indirect costs.

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(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) "Original Pronouncements, Accounting Standards as of

June 1, 1995, Volume 1 and Volume 2" published by [ef] the Financial Accounting Standards Board.

(2) The "Government Auditing Standards", "Original Pronouncements, Accounting Standards" and "Codification of Statements on Auditing Standards" are incorporated by reference as a part of this administrative regulation.

(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.

(4)(a) Prior to the issuance of a final audit report, the auditor from the Transportation Cabinet shall present the draft audit findings to the firm either in an exit conference or in written correspondence to the firm.

(b) If the auditor provides the draft audit findings in writing, he shall notify the firm that within one (1) week of the mailing of the draft audit findings, the firm may request a copy of the auditor's work papers for review. Any comments the firm submits in writing within fifteen (15) days of the mailing of the work papers shall be taken into consideration in the issuance of the final audit report.

(c) If the auditor and the firm hold an exit conference, the auditor shall allow the firm to review or copy the work papers. The firm may submit any additional comments in writing within fifteen (15) days of the exit conference. These additional comments shall be taken into consideration in the issuance of the final audit report.

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 request a review of the audit [appeal] within thirty (30) [forty-five (45)] days of the date the final audit report is transmitted to the firm [Audit Review Committee of the Transportation Cabinet]. The request for a review shall be in writing and clearly state all of the concerns with the audit and the reasons for the concern.

(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) The Audit Review Committee shall discuss the findings of the audit and the request for review. The Audit Review Committee may request the firm or the auditor to answer questions in person, by electronic communication, or in writing.

(5) If the firm is not satisfied with the decision of the Audit Review Committee, he may further appeal to the Secretary of the Transportation Cabinet within thirty (30) days of transmittal of the committee's decision to the firm. An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B. [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

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: February 12, 1996

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FILED WITH LRC: February 13, 1996 at noon

TRANSPORTATION CABINET
Department of Highways
Permits Branch
(Amended After Hearing)

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 (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. [448] 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 in an area governed by state or local zoning laws and in compliance [consistent] with the state and local zoning laws and administrative regulations. If there was no local zoning ordinance in effect on March 10, 1960 or if there is no local zoning ordinance in effect at the time of the permit application, the provisions of paragraph (a) of this subsection shall not be applicable.

(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, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of an advertising device.

(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

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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 ~~(is)~~ 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

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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)~~ [(6)] 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.]~~

~~(e)~~ 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)~~ [(4)] 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 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 on a single facing or panel, each one (1) shall occupy approximately fifty (50) percent of the device;

3. If a billboard advertising device contains two (2) messages in one (1) direction of travel, each on a separate panel or facing where one (1) panel or facing is placed above or beside the other but where the two (2) separate panels or facings are not touching, there may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection 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)~~ An on-premise advertising device shall not affect spacing requirements for billboard advertising.

~~(e)~~ [(4)] A billboard advertising device may only be illuminated by

white lights.

~~(8)~~ [(7)] 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

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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) 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;~~

~~(g) 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;~~

~~(h) An advertising device which contains, includes or is illuminated by any flashing, intermittent or moving lights, except for an on-premise device providing public service information including time, date, temperature or weather;~~

~~(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;~~

~~(j) An advertising device which moves or has any animated or moving parts;~~

~~(k) An advertising device erected or maintained upon trees or painted or drawn upon rocks or other natural features;~~

~~(l) An advertising device exceeding 1,250 square feet (115 square meters) in area, including border and trim but excluding supports;~~

~~(m) An advertising device erected upon or overhanging the right-of-way of any highway; or~~

~~(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 it is 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.

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(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 of travel.

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 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, milestone 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 of receipt of the notice, 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 to the Transportation Cabinet, Office of General Counsel, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622, within twenty (20) days of the date of the Department of Highway's written response.

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(c) The owner or permittee may appeal directly to the Transportation Cabinet, Office of General Counsel at the address set forth in paragraph (b) of this subsection 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.

(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 04 from the Tennessee state line in Fulton County to KY 239 in Hickman County;

(b) KY 239 from KY 04 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:

	<u>From</u>	<u>To</u>
	<u>Milepoints</u>	
<u>(a) Cordell Hull Highway in Barren County:</u>		
<u>KY 70 - From I-65 overpass to KY 90.</u>	<u>5.118</u>	<u>5.359</u>
<u>KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).</u>	<u>.000</u>	<u>9.923</u>
<u>US 31E - From KY 90 to US 68.</u>	<u>14.849</u>	<u>14.258</u>
<u>US 31EX - From US 68 to Washington Street around Courthouse Square in Glasgow.</u>	<u>1.516</u>	<u>1.384</u>
<u>(b) Old Kentucky Turnpike in Larue County:</u>		
<u>US 31E - From the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line.</u>	<u>7.000</u>	<u>20.725</u>
<u>(c) Old Kentucky Turnpike in Nelson County:</u>		
<u>US 31E - From the Larue County Line to US 62 in Bardstown.</u>	<u>.000</u>	<u>14.205</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 entrance of My Old Kentucky Home State Park.</u>	<u>0.000</u>	<u>0.375</u>
<u>(d) Shakertown Road in Mercer County:</u>		
<u>US 68 - From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village.</u>	<u>15.652</u>	<u>13.252</u>
<u>(e) Duncan Hines Scenic Highway in Warren County:</u>		
<u>KY 101 - From US 31W (south) to Edmonson County Line.</u>	<u>11.641</u>	<u>12.850</u>
<u>US 31E - From Duncan Hines former home to KY 446 overpass.</u>	<u>16.559</u>	<u>17.569</u>
<u>(f) Duncan Hines Scenic Highway in Edmonson County:</u>		
<u>KY 101 - From Warren County Line to KY 259 at Rhoda.</u>	<u>0.000</u>	<u>4.131</u>
<u>KY 259 - From KY 101 at Rhoda to KY 70 (east).</u>	<u>9.242</u>	<u>12.096</u>
<u>KY 70 - From KY 259 (south) to KY 259 (north).</u>	<u>12.388</u>	<u>9.939</u>
<u>KY 259 - From KY 238 at Bee Spring to KY 738.</u>	<u>18.998</u>	<u>17.568</u>
<u>(g) Great River Road in Fulton County:</u>		
<u>KY 239 - From Hickman County Line to KY 94 in Cayce.</u>	<u>6.379</u>	<u>3.617</u>
<u>KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.</u>	<u>0.000</u>	<u>10.902</u>
<u>KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.</u>	<u>13.642</u>	<u>22.121</u>
<u>(h) Great River Road in Hickman County:</u>		
<u>KY 239 - From Fulton County Line to KY 123.</u>	<u>0.000</u>	<u>3.753</u>
<u>KY 123 - From KY 239 to Proposed FAP 94 at Hallwell.</u>	<u>10.048</u>	<u>15.788</u>

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<u>KY 123 - From Bottery Road in South Columbus to KY 58.</u>	<u>20.882</u>	<u>21.787</u>
<u>(j) Pine Mountain Road in Letcher County:</u>		
<u>US 119 - From KY 15 in Whitesburg to KY 806 near Oven Fork.</u>	<u>17.308</u>	<u>9.155</u>
<u>(i) US 68 Segment 1 in Boyle County:</u>		
<u>US 68 - From US 150 in Perryville to US 150 in Perryville.</u>	<u>7.369</u>	<u>7.475</u>
<u>(k) US 68 Segment 1 in Jessamine County:</u>		
<u>US 68 - From Mercer County Line to 0.5 miles south of KY 1980.</u>	<u>0.000</u>	<u>11.610</u>
<u>(l) US 68 Segment 1 in Mercer County:</u>		
<u>US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.</u>	<u>6.752</u>	<u>20.104</u>
<u>(m) US 68 Segment 2 in Bourbon County:</u>		
<u>US 27/68 - From Fayette County Line to US 68X in Paris.</u>	<u>0.000</u>	<u>6.765</u>
<u>US 68X - From 10th Street to 8th Street in Paris.</u>	<u>1.366</u>	<u>1.487</u>
<u>US 68X - From Paris Bypass to North Middletown Road in Paris.</u>	<u>2.583</u>	<u>2.772</u>
<u>US 68 - From US 68X to the Nicholas County Line.</u>	<u>2.360</u>	<u>10.814</u>
<u>(n) US 68 Segment 2 in Nicholas County:</u>		
<u>US 68 - From Bourbon County Line to KY 32/36.</u>	<u>0.000</u>	<u>3.717</u>
<u>(o) US 68 Segment 3 in Nicholas County:</u>		
<u>US 68 - From the Licking River Bridge to the Robertson County Line.</u>	<u>11.687</u>	<u>12.211</u>
<u>(p) US 68 Segment 3 in Robertson County:</u>		
<u>US 68 - From Nicholas County Line to the Fleming County Line.</u>	<u>0.000</u>	<u>1.357</u>
<u>(q) US 68 Segment 3 in Fleming County:</u>		
<u>US 68 - From Robertson County Line to the Mason County Line.</u>	<u>0.000</u>	<u>5.423</u>
<u>(r) US 68 Segment 3 in Mason County:</u>		
<u>US 68 - From Fleming County Line to US 62 in Washington.</u>	<u>0.000</u>	<u>11.854</u>
<u>US 62 - From KY 2515 to Ohio State Line.</u>	<u>13.381</u>	<u>18.000</u>

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.

	<u>Milepoint</u>	
	<u>From</u>	<u>To</u>
<u>(1) Adair County:</u>		
<u>KY 55 - From Cumberland Parkway in Columbia to the Taylor County Line.</u>	<u>10.059</u>	<u>19.006</u>
<u>KY 80 - From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N.</u>	<u>11.775</u>	<u>12.282</u>
<u>KY 61 - From KY 80 in Columbia to Green County Line.</u>	<u>15.248</u>	<u>23.997</u>
<u>(2) Allen County:</u>		
<u>US 231 - From US 31E northwest of Scottsville to Warren County Line.</u>	<u>.000</u>	<u>9.075</u>
<u>US 31E - From Tennessee State Line via Scottsville Bypass to Barren County Line.</u>	<u>.000</u>	<u>19.189</u>
<u>(3) Anderson County:</u>		
<u>US 127 - From Mercer County Line to US 127 Bypass.</u>	<u>.000</u>	<u>2.535</u>
<u>US 127B - From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.</u>	<u>.000</u>	<u>6.656</u>
<u>US 127 - From US 127 Bypass to Franklin County Line.</u>	<u>8.897</u>	<u>11.120</u>
<u>KY 151 - From US 127 Bypass to Franklin County Line.</u>	<u>.000</u>	<u>4.587</u>
<u>(4) Ballard County:</u>		
<u>US 51 - From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.</u>	<u>.000</u>	<u>8.297</u>
<u>US 60 - From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Kevil to McCracken County Line.</u>	<u>.000</u>	<u>16.937</u>
<u>KY 121 - From Carlisle County Line to 4th Street in Wickliffe.</u>	<u>.000</u>	<u>8.609</u>
<u>(5) Barren County:</u>		
<u>KY 70 - From I 65 at Cave City to KY 90.</u>	<u>5.118</u>	<u>5.359</u>
<u>US 68 - From US 31E (South Green Street) to KY 90 at Broadway.</u>	<u>12.577</u>	<u>12.650</u>
<u>KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).</u>	<u>.000</u>	<u>9.923</u>
<u>KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.</u>	<u>9.923</u>	<u>22.022</u>
<u>US 68 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).</u>	<u>11.741</u>	<u>12.577</u>
<u>US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).</u>	<u>1.384</u>	<u>1.461</u>
<u>US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.</u>	<u>1.461</u>	<u>1.516</u>
<u>US 31E - From Allen County Line via Glasgow Bypass to KY 90.</u>	<u>.000</u>	<u>14.849</u>
<u>(6) Bell County:</u>		
<u>US 25E - From Virginia State Line to Knox County Line.</u>	<u>.000</u>	<u>19.714</u>
<u>US 119 - From US 25E to Harlan County Line.</u>	<u>.000</u>	<u>15.756</u>
<u>(7) Bourbon County:</u>		
<u>US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.</u>	<u>.000</u>	<u>15.435</u>
<u>US 68 - From US 27 in Paris via Paris Bypass to Nicholas County Line.</u>	<u>.000</u>	<u>10.814</u>
<u>US 460 - From Scott County Line to Paris Bypass.</u>	<u>.000</u>	<u>7.696</u>
<u>US 68X - From 10th Street via Main Street to 8th Street in Paris.</u>	<u>1.366</u>	<u>1.487</u>

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<u>US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.</u>	2,583	2,772
<u>US 460 - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line.</u>	9,150	21,933
<u>KY 627 - From Clark County Line via 10th Street to US 68X (Main Street).</u>	.000	9,511
<u>US 460 - From US 68X (Main Street) via 8th Street to US 27 (Paris Bypass).</u>	7,696	9,150
<u>(8) Boyd County:</u>		
<u>US 23 - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line.</u>	.000	21,042
<u>KY 180 - From south limits of I-64 Interchange to US 60.</u>	.627	2,518
<u>US 60 - From KY 180 near Cannonsburg via 13th Street to Winchester Avenue in Ashland.</u>	4,023	12,198
<u>US 23S - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line.</u>	.000	.591
<u>(9) Boyle County:</u>		
<u>KY 34 - From US 150 (Main Street) in Danville via Lexington Road to Garrard County Line.</u>	12,406	17,770
<u>KY 52 - From US 150 to Garrard County Line.</u>	.000	5,114
<u>US 127 - From Lincoln County Line to existing alignment near Bonta Lane.</u>	.000	2,000
<u>US 127 - From proposed alignment near Bonta Lane to south urban limits of Danville.</u>	1,864	2,972
<u>US 127B - From US 127 via the Danville Bypass to US 127 at KY 2168.</u>	.000	5,270
<u>US 127 - From KY 2168 to Mercer County Line.</u>	7,867	9,849
<u>US 127 - From US 127B in Danville via 4th and 3rd Streets to US 150 (Main Street).</u>	2,972	4,957
<u>US 150 - From Washington County Line to US 68 in Perryville.</u>	.000	4,504
<u>US 68 - From US 150 in Perryville to US 150 in Perryville.</u>	7,369	7,475
<u>US 150 - From US 68 in Perryville to Lincoln County Line.</u>	4,495	18,766
<u>US 127 - From US 150 at Maple Street Intersection via Main St. to US 150 at 3rd Street Intersection.</u>	5,495	4,957
<u>US 150B - From US 127 (Hustonville Road) to US 150 (Standford Road).</u>	.000	2,272
<u>(10) Bracken County:</u>		
<u>KY 9 - From Mason County Line to Pendleton County Line.</u>	.000	19,857
<u>(11) Breathitt County:</u>		
<u>KY 15 - From Perry County Line to Wolfe County Line.</u>	.000	27,505
<u>(12) Breckinridge County:</u>		
<u>KY 259 - From Grayson County Line to KY 79.</u>	.000	7,901
<u>KY 79 - From KY 259 to US 60.</u>	5,294	14,990
<u>KY 3199 - From Hancock County Line to US 60X (Business).</u>	.000	1,056
<u>US 60X - From KY 3199 to US 60.</u>	.000	2,500
<u>US 60 - From US 60X (Business) via the Hardinsburg Bypass to the Meade County Line.</u>	3,500	31,788
<u>(13) Bullitt County:</u>		
<u>US 31E - From Spencer County Line to US 31E Mainline (Main St in Mt. Washington.)</u>	.000	2,913
<u>US 150 - From point on US 31E Mainline via Mt. Washington Bypass to another point on US 31E Mainline.</u>	.000	2,000
<u>US 31E - From proposed Mt. Washington Bypass to Jefferson County Line.</u>	5,320	5,465
<u>(14) Caldwell County:</u>		
<u>US 641 - From Lyon County Line to Crittenden County Line.</u>	.000	4,269
<u>(15) Calloway County:</u>		
<u>KY 121 - From US 641 to Graves County Line.</u>	14,075	24,156
<u>US 641 - From Tennessee State Line via Murray to Marshall County Line.</u>	.000	17,444
<u>(16) Campbell County:</u>		
<u>US 27 - From Pendleton County Line to US 27 South.</u>	.000	22,250
<u>US 27 - From US 27 South (York St.) Via new bridge to Ohio State Line.</u>	.000	.400
<u>KY 1120 - From Kenton County Line to York Street.</u>	.000	.668
<u>KY 1998 - From US 27 to KY 8.</u>	2,813	5,014
<u>KY 471 - From US 27 to 471 (Eastbound I-275 Overpasses).</u>	.000	.729
<u>KY 9 - From Pendleton County Line to north limits of I-275 Interchange.</u>	.000	17,978
<u>(17) Carlisle County:</u>		
<u>US 51 - From Hickman County Line to proposed location of the Great River Road.</u>	.000	10,725
<u>US 51 - From a point on US 51 Mainline via the proposed Great River Road to the Ballard County Line.</u>	.000	1,800
<u>US 94 - From Hickman County Line via the proposed Great River Road to proposed US 51.</u>	.000	9,000
<u>KY 121 - From Graves County Line to Ballard County Line.</u>	.000	9,714
<u>(18) Carter County:</u>		
<u>KY 7 - From Elliot County Line to US 60 in Grayson.</u>	.000	10,865
<u>KY 1 - From US 60 to KY 9.</u>	10,646	11,934
<u>KY 9 - From KY 1 to Lewis County Line.</u>	.000	18,262
<u>(19) Casey County:</u>		
<u>US 127 - From Russell County Line to Lincoln County Line.</u>	.000	23,715
<u>(20) Christian County:</u>		
<u>US 41A - From Tennessee State Line to end of north exit ramp of Pennyryle Parkway.</u>	.000	13,611
<u>US 41LP - From KY 107 to northwest urban limits of Hopkinsville at KY 91/1682.</u>	.000	5,100
<u>KY 3493 - From US 41A at a point south of Hopkinsville to KY 107.</u>	.000	1,892
<u>US 41 - From Todd County Line to southbound exit ramp of the Pennyryle Parkway.</u>	.000	10,325
<u>US 41 - From US 68 to US 68 in Hopkinsville.</u>	11,909	12,441

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<u>US 68 - From Trigg County Line to Todd County Line.</u>	.000	21.126
<u>KY 1682 - From US 68 to Pennyrile Parkway.</u>	.000	3.904
<u>(21) Clark County:</u>		
<u>KY 627 - From Madison County Line to KY 1958.</u>	.000	6.360
<u>KY 1958 - From KY 627 to north limits of the I64 interchange.</u>	.000	2.860
<u>KY 627 - From southern limits of I-64 Interchange to Bourbon County Line.</u>	9.154	14.812
<u>(22) Clay County:</u>		
<u>KY 80 - From south limits of interchange ramps of Daniel Boone Parkway to US 421.</u>	7.101	7.537
<u>US 421 - From KY 80 to Jackson County Line.</u>	16.915	32.841
<u>(23) Clinton County:</u>		
<u>KY 90 - From Cumberland County Line to Wayne County Line.</u>	.000	12.816
<u>US 127 - From Tennessee State Line to Russell County Line.</u>	.000	20.967
<u>(24) Crittenden County:</u>		
<u>US 60 - From Livingston County Line to Union County Line.</u>	.000	23.018
<u>US 641 - From Caldwell County Line to US 60.</u>	.000	7.494
<u>(25) Cumberland County:</u>		
<u>KY 90 - From Metcalfe County Line to Clinton County Line.</u>	.000	22.450
<u>KY 61 - From Tennessee State Line to KY 90 West.</u>	.000	13.701
<u>(26) Daviess County:</u>		
<u>Proposed FAP 10 - From US 60 near Maceo to Indiana State Line.</u>	.000	3.800
<u>US 60 - From Owensboro Beltline to US 60 (Lewisport Road).</u>	.000	2.600
<u>US 60 - From US 60 Bypass West of Owensboro to Hancock County Line.</u>	10.179	27.979
<u>US 60B - From US 60 to US 60 (Lewisport Road).</u>	.000	10.212
<u>US 60S - From KY 54 to Owensboro Beltline.</u>	.000	.500
<u>KY 54 - From US 431 (Frederica Street) east limits of US 60 Bypass Interchange.</u>	.000	2.663
<u>US 431 - From McLean County Line to 2nd Street.</u>	.000	14.670
<u>KY 2245 - From US 431 (Frederica Street) via 5th Street to US 631 (Lewis Street).</u>	.000	.246
<u>US 231 - From US 60 Bypass via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line.</u>	11.243	15.721
<u>KY 2235 - From US 60 via Triplet Street to US 60.</u>	.000	.145
<u>KY 1467 - From US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street.</u>	.000	.234
<u>(27) Edmonson County:</u>		
<u>KY 101 - From Warren County Line to KY 259 at Rhonda.</u>	.000	4.131
<u>KY 259 - From KY 101 at Rhonda to KY 70 eastbound.</u>	9.242	12.096
<u>KY 70 - From KY 259 southbound to KY 259 northbound.</u>	9.939	12.388
<u>KY 259 - From KY 70 westbound to Grayson County Line.</u>	12.096	22.692
<u>(28) Elliott County:</u>		
<u>KY 7 - From Morgan County Line to Carter County Line.</u>	.000	19.312
<u>(29) Fayette County:</u>		
<u>US 27 - From Jessamine County Line via Nicholasville Road, South Limestone, Euclid Avenue, South Upper, Bolivar, and South Broadway to US 25.</u>	.000	6.941
<u>US 25 - From Main Street via Newtown Pike to KY 922 at Georgetown Street.</u>	14.632	15.237
<u>KY 4 - The entire length of New Circle Road.</u>	.000	19.283
<u>KY 922 - From US 25 (Georgetown Road) via Newtown Pike to north limits of I-75 Interchange.</u>	.000	3.055
<u>US 27 - From KY 4 (New Circle Road) via Paris Pike to Bourbon County Line.</u>	8.450	15.767
<u>US 60 - From Woodford County Line to US 27/68.</u>	.000	8.162
<u>US 68 - From southeast urban limits of Lexington at Jessamine County Line via Harrodsburg Road to KY 4.</u>	.000	3.110
<u>US 421 - From KY 4 via West Main Street to US 25.</u>	.000	1.798
<u>US 25 - From KY 418 via Richmond Road, East Main Street, and West Main Street to US 421.</u>	8.244	14.632
<u>KY 418 - From US 25 to southeast limits of I-75 Interchange.</u>	.000	2.602
<u>(30) Fleming County:</u>		
<u>KY 32 - From Rowan County Line to KY 11 at a point southwest of Flemingsburg.</u>	10.615	28.293
<u>KY 11 - From junction with KY 32 at point southwest of Flemingsburg to Mason County Line.</u>	10.860	17.263
<u>US 68 - From Robertson County Line to Mason County Line.</u>	.000	5.423
<u>(31) Floyd County:</u>		
<u>KY 114 - From Magoffin County Line to KY 1428 in Prestonsburg.</u>	.000	12.430
<u>US 23 - From Pike County Line to KY 114 ramp.</u>	.000	15.389
<u>KY 80 - From Knott County Line to US 23.</u>	.000	14.435
<u>KY 1428 - From KY 114 in Prestonsburg to KY 321 in Prestonsburg.</u>	15.605	16.091
<u>KY 321 - From KY 1428 in Prestonsburg to US 23 south of Auxier.</u>	.000	4.278
<u>US 23 - From KY 321 south of Auxier to Johnson County Line.</u>	21.502	24.014
<u>(32) Franklin County:</u>		
<u>US 127 - From Anderson County Line via Capital Plaza-West Frankfort Connector Wilkerson Boulevard to Owen County Line.</u>	.000	22.098
<u>US 421 - From US 127 (Owenton Road) via Thornhill Bypass to US 460 (Georgetown Road).</u>	3.072	4.520
<u>KY 151 - From Anderson County Line to I-64.</u>	.000	2.222

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<u>US 60 - From US 460 at Georgetown Road in Frankfort via Versailles Road to Woodford County Line.</u>		
<u>US 421 - From US 127 to Henry County Line.</u>	10.716	14.038
<u>US 460 - From US 60 at Versailles Road in Frankfort via Georgetown RD to Scott County Line.</u>	4.520	17.886
<u>KY 676 - From US 127 (Lawrenceburg Road) via East-West Connector in Frankfort to US 60 (Versailles Road).</u>	.000	6.114
<u>(33) Fulton County:</u>		
<u>US 51 - From Purchase Parkway to Hickman County Line.</u>	.000	5.287
<u>KY 239 - From Hickman County Line to KY 94 in Cayce.</u>	.000	5.472
<u>KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.</u>	6.379	3.617
<u>KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.</u>	0.000	10.902
<u>KY 1099 - Fulton Bypass from KY 94 west of Hickman to KY 94 east of Hickman.</u>	13.642	22.121
<u>(34) Gallatin County:</u>		
<u>KY 35 - From Owen County Line at Sparta to I-71.</u>	.000	2.966
<u>(35) Garrard County:</u>		
<u>US 27 - From Lincoln County Line to Jessamine County Line.</u>		
<u>KY 34 - From Boyle County Line to US 27.</u>	.000	16.510
<u>KY 1295 - From KY 52 to Madison County Line.</u>	.000	1.610
<u>KY 52 - From Boyle County Line to KY 954.</u>	.000	6.928
<u>KY 954 - From KY 52 to Madison County Line.</u>	.000	13.476
<u>(36) Graves County:</u>		
<u>US 45 - From southern interchange of Purchase Parkway to McCracken County Line.</u>	18.950	31.580
<u>KY 80 - From Purchase Parkway via West Broadway to US 45 at 7th Street in Mayfield.</u>	9.638	11.461
<u>KY 58 - From US 45 at 7th Street via East Broadway to Marshall County Line.</u>	5.530	14.881
<u>KY 121 - From Calloway County Line via Murray Road and 5th Street to KY 58 at Broadway.</u>	.000	10.623
<u>US 45 - From KY 80 at Broadway via North 8th Street to KY 121 at Housman Street.</u>	17.219	17.952
<u>KY 121 - From US 45 (North 8th Street) via Housman Street to Carlisle County Line.</u>	10.623	22.559
<u>(37) Grayson County:</u>		
<u>KY 259 - From Edmonson County Line to US 62 westbound.</u>	.000	12.954
<u>US 62 - From KY 259 southbound to KY 259 northbound.</u>	20.787	21.296
<u>KY 259 - From US 62-Eastbound to Breckinridge County Line.</u>	12.954	21.459
<u>(38) Green County:</u>		
<u>KY 61 - From Adair County Line to US 68.</u>		
<u>US 68 - From KY 61 southbound to West Hodgenville Avenue in Greensburg.</u>	.000	8.194
<u>KY 61 - From KY 88 north of Greensburg to Larue County Line.</u>	11.954	13.616
<u>(39) Greenup County:</u>		
<u>KY 8 - From Lewis County Line to KY 8 Spur at South Portsmouth.</u>	.000	1.956
<u>US 23 - From Boyd County Line to south end of US Grant Bridge.</u>	.000	28.760
<u>KY 8 - From KY 8 Spur to US 23 at south limits of U.S. Grant Bridge in South Portsmouth.</u>	1.956	3.023
<u>KY 8S - From KY 8 via Carl Perkins Bridge to Ohio State Line.</u>	.000	.610
<u>KY 10 - From Lewis County Line to the second landward pier from river's edge in Ohio.</u>	.000	12.844
<u>(40) Hancock County:</u>		
<u>US 60 - From Daviess County Line to KY 3199 in Hawesville.</u>	.000	10.782
<u>KY 3199 - From US 60 in Hawesville to another junction with US 60.</u>	.000	3.301
<u>US 60 - From KY 3199 to Squirrel Tail Hollow Road.</u>	13.666	15.220
<u>KY 3199 - From another junction with US 60 to the Breckinridge County Line.</u>	3.301	5.558
<u>KY 69 - From US 60 at Hawesville to Indiana State Line.</u>	14.126	15.018
<u>(41) Hardin County:</u>		
<u>US 31WB - From Western Kentucky Parkway to US 31W.</u>		
<u>US 31W - From US 31W Bypass to Meade County Line.</u>	.202	3.704
<u>US 31W - From Meade County Line to Jefferson County Line.</u>	18.818	33.040
<u>KY 61 - From Larue County Line to US 31W.</u>	33.040	37.143
<u>(42) Harlan County:</u>		
<u>US 119 - From Bell County Line to proposed relocation east of Cumberland.</u>	.000	38.082
<u>US 119 - From a point on the US 119 Mainline near Cumberland to Letcher County Line.</u>	.000	1.100
<u>US 421 - From Virginia State Line to Leslie County Line.</u>	.000	27.632
<u>(43) Harrison County:</u>		
<u>US 27 - From Bourbon County Line to Pendleton County Line.</u>		
<u>(44) Henderson County:</u>		
<u>US 41 - From Pennyriple Parkway to Indiana State Line (north urban limits of Henderson).</u>	13.414	21.193
<u>US 60 - From Union County Line to Henderson Bypass.</u>	.000	8.712
<u>KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennyriple Parkway.</u>		
<u>(45) Henry County:</u>		
<u>KY 55 - From Shelby County Line to KY 22 west in Eminence.</u>	.000	6.201
<u>KY 22 - From KY 55 south to KY 55 north.</u>	.000	1.408
<u>KY 55 - From KY 22 east to US 421.</u>	7.420	7.522
	1.408	4.490

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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
<u>(46) Hickman County:</u>		
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
<u>(47) Hopkins County:</u>		
KY 281 - From east limits of interchange ramps of Pennyrile Parkway to US 41.	.000	.712
US 41A - From US 41 and KY 281 to Webster County Line.	.000	13.278
<u>(48) Jackson County:</u>		
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
<u>(49) Jefferson County:</u>		
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
KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65.	.000	10.250
<u>(50) Jessamine County:</u>		
US 27 - From the Garrard County Line to Fayette County Line.	.000	15.070
US 68 - From Mercer County Line to Fayette County Line.	.000	12.060
<u>(51) Johnson County:</u>		
US 23 - From Floyd County Line to Lawrence County Line.	.000	18.386
US 460 - From Magoffin County Line to US 23 near Paintsville.	.000	7.700
<u>(52) Kenton County:</u>		
KY 1120 - From I-75 to Campbell County Line.	.000	1.212
<u>(53) Knott County:</u>		
KY 15 - From Letcher County Line to Perry County Line.	.000	9.380
KY 80 - From Perry County Line to Floyd County Line.	.000	20.093
<u>(54) Knox County:</u>		
US 25E - From Bell County Line to Laurel County Line.	.000	26.571
KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed).	.000	2.100
KY 3041 - From 1.621 miles south of US 25E to US 25E.	.000	1.621
<u>(55) Larue County:</u>		
KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line.	.000	13.603
US 31E - From KY 61 south via Hodgenville to Nelson County Line.	6.900	20.725
<u>(56) Laurel County:</u>		
US 25E - From Knox County Line in Corbin to west limits of I-75 ramps.	.000	2.024
US 25 - From Daniel Boone Parkway in London to KY 490.	13.612	16.315
KY 490 - From US 25 to KY 30 at East Bernstadt.	.000	.877
KY 30 - From KY 490 to Jackson County Line.	1.404	9.806
KY 80 - From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.	.000	11.083
KY 192 - From west ramps of I-75 to the Daniel Boone Parkway east of London.	18.190	22.041
<u>(57) Lawrence County:</u>		
US 23 - From Johnson County Line to Boyd County Line.	.000	28.947
KY 645 - From US 23 to Martin County Line.	.000	5.205
<u>(58) Lee County:</u>		
KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.	.000	14.845
<u>(59) Leslie County:</u>		
US 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).	.000	22.613
KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.	.000	3.524
<u>(60) Letcher County:</u>		
KY 15 - From US 119 at Whitesburg to KY 7 North at Isom.	.000	9.230
KY 7 - From KY 15 to KY 15.	13.497	14.157
KY 15 - From KY 7 South in Isom to Knott County Line.	9.230	10.675
US 23 - From Virginia State Line along proposed alignment to US 119 to Pike County Line.	.000	7.000
US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.	.000	27.798
<u>(61) Lewis County:</u>		
KY 9 - From Carter County Line to Mason County Line.	.000	31.218
KY 8C - From KY 10 to KY 8 south of Quincy.	.000	.127
KY 8 - From KY 8C south of Quincy to Greenup County Line.	28.575	36.910

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<u>KY 10 - From KY 9 Greenup County Line.</u>	6.788	19.834
<u>(62) Lincoln County:</u>		
<u>US 27 - From Pulaski County Line via Stanford to Garrard County Line.</u>	.000	21.982
<u>US 127 - From Casey County Line via Hustonville to Boyle County Line.</u>	.000	10.847
<u>US 150 - From Boyle County Line to US 150 Bypass.</u>	.000	4.347
<u>US 150B - From US 150 to US 150.</u>	.000	3.522
<u>US 150 - From US 150/US 150 Bypass near Preacherville Road to Rockcastle County Line.</u>	8.705	19.665
<u>(63) Livingston County:</u>		
<u>US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.</u>	.000	29.059
<u>US 62 - From Marshall County Line via Lake City to Lyon County Line.</u>	.000	2.854
<u>(64) Logan County:</u>		
<u>US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.</u>	.000	12.135
<u>US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.</u>	.000	26.567
<u>US 431 - From Tennessee State Line to Muhlenberg County Line.</u>	.000	31.898
<u>(65) Lyon County:</u>		
<u>US 62 - From Livingston County Line to US 641 at Fairview.</u>	.000	10.465
<u>US 641 - From US 62 at Fairview to Caldwell County Line.</u>	.000	5.715
<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>	.000	10.820
<u>US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.</u>	.000	13.544
<u>US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Beltline Highway, and Division Street to the Livingston County Line.</u>	13.544	20.028
<u>US 62 - From US 60 to US 68.</u>	12.881	15.513
<u>US 68 - From US 62 to Marshall County Line.</u>	.000	2.677
<u>(67) McCreary County:</u>		
<u>US 27 - From Tennessee State Line to Pulaski County Line.</u>	.000	22.252
<u>KY 90 - From US 27 to Whitley County Line.</u>	.000	11.920
<u>(68) McLean County:</u>		
<u>US 431 - From Muhlenberg County Line to Daviess County Line.</u>	.000	11.573
<u>(69) Madison County:</u>		
<u>KY 1295 - From Garrard County Line to KY 52.</u>	.000	4.529
<u>KY 52 - From KY 1295 via Lancaster Avenue to KY 876.</u>	5.444	10.910
<u>KY 954 - From Garrard County Line to KY 21.</u>	.000	.139
<u>KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.</u>	6.176	9.115
<u>US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.</u>	2.863	3.810
<u>KY 21 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.</u>	9.115	14.196
<u>KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).</u>	7.097	10.755
<u>US 25 - From US 421 via Big Hill Avenue to KY 876.</u>	11.960	15.500
<u>US 421 - From US 25 to Rockcastle County Line.</u>	.000	13.031
<u>US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.</u>	.000	3.900
<u>US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.</u>	19.188	20.158
<u>KY 627 - From US 25 west of I-75 to Clark County Line.</u>	.000	6.118
<u>(70) Magoffin County:</u>		
<u>US 460 - From Mountain Parkway to KY 114.</u>	12.546	14.635
<u>KY 114 - From US 460 to Floyd County Line.</u>	.000	5.026
<u>US 460 - From Morgan County Line to Mountain Parkway West.</u>	.000	12.546
<u>US 460 - From KY 114 to Johnson County Line.</u>	14.635	20.426
<u>(71) Marion County:</u>		
<u>US 68 - From Taylor County Line to KY 55 (Walnut St.).</u>	.000	10.690
<u>KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St. Marys Road).</u>	.000	.389
<u>KY 49 - From KY 55 (St. Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).</u>	17.815	17.968
<u>KY 55 - From KY 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line.</u>	.389	4.669
<u>(72) Marshall County:</u>		
<u>KY 58 - From Graves County Line to KY 80.</u>	.000	2.156
<u>KY 80 - From KY 58 to US 68.</u>	.000	16.926
<u>US 68 - From McCracken County Line to Trigg County Line.</u>	.000	28.085
<u>US 641 - From Calloway County Line to US 62.</u>	.000	19.422
<u>US 62 - From I-24 to Livingston County Line.</u>	8.805	12.081
<u>US 641S - From US 641 to Purchase Parkway.</u>	.000	3.519
<u>(73) Martin County:</u>		
<u>KY 645 - From KY 40 at a point west of Inez Bypass to KY 3 northbound south of Inez.</u>	4.682	6.605
<u>KY 3 - From KY 645 westbound via Inez Bypass to KY 645 eastbound.</u>	9.709	10.019
<u>KY 645 - From KY 3 southbound via Inez Bypass to KY 40 southeast of Inez.</u>	6.605	7.632

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<u>KY 40 - From KY 645 southeast of Inez to West Virginia State Line.</u>	<u>11.900</u>	<u>20.280</u>
<u>KY 645 - From Lawrence County Line to KY 40 at a point west of Inez.</u>	<u>.000</u>	<u>4.682</u>
<u>(74) Mason County:</u>		
<u>KY 11 - From Fleming County Line to KY 9.</u>	<u>.000</u>	<u>8.452</u>
<u>US 68 - From Fleming County Line to US 62 in Washington.</u>	<u>.000</u>	<u>11.854</u>
<u>US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.</u>	<u>12.672</u>	<u>18.000</u>
<u>KY 9 - From Lewis County Line to Bracken County Line.</u>	<u>.000</u>	<u>19.554</u>
<u>KY 546S - From KY 9 to Ohio State Line via proposed New Bridge.</u>	<u>.000</u>	<u>4.600</u>
<u>(75) Meade County:</u>		
<u>US 31W - From Hardin County Line to Hardin County Line.</u>	<u>.000</u>	<u>3.827</u>
<u>US 60 - From Breckinridge County Line to US 31W.</u>	<u>.000</u>	<u>15.644</u>
<u>KY 144 - From US 60 to KY 448 near Buck Grove.</u>	<u>25.390</u>	<u>28.665</u>
<u>KY 448 - From KY 144 to KY 1051 (Brandenburg Bypass).</u>	<u>.000</u>	<u>4.392</u>
<u>KY 1051 - From KY 448 via Brandenburg Bypass to KY 79.</u>	<u>.000</u>	<u>2.218</u>
<u>KY 79 - From KY 1051 via Brandenburg Bypass to Indiana State Line.</u>	<u>8.237</u>	<u>9.912</u>
<u>(76) Menifee County:</u>		
<u>US 460 - From Montgomery County Line to Morgan County Line.</u>	<u>.000</u>	<u>19.750</u>
<u>(77) Mercer County:</u>		
<u>US 127 - From Boyle County Line via Danville Road to US 68.</u>	<u>.000</u>	<u>4.402</u>
<u>US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.</u>	<u>6.752</u>	<u>20.104</u>
<u>US 127 - From US 68 to Anderson County Line.</u>	<u>4.402</u>	<u>17.150</u>
<u>(78) Metcalfe County:</u>		
<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>

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<u>(91) Robertson County:</u>		
<u>US 68 - From Nicholas County Line to Fleming County Line.</u>	.000	1.357
<u>(92) Rockcastle County:</u>		
<u>US 150 - From Lincoln County Line to US 25 in Mount Vernon.</u>	.000	10.511
<u>US 25 - From I-75 to US 150.</u>	11.764	13.882
<u>US 421 - From Jackson County Line to Madison County Line.</u>	.000	.601
<u>KY 461 - From Pulaski County Line to US 25.</u>	.000	9.404
<u>US 25 - From KY 461 to I-75.</u>	15.018	15.678
<u>(93) Rowan County:</u>		
<u>KY 32 - From Fleming County Line to south limits of I-64 interchange.</u>	.000	5.784
<u>(94) Russell County:</u>		
<u>US 127 - From Clinton County Line to Casey County Line.</u>	.000	26.998
<u>(95) Scott County:</u>		
<u>US 460 - From Franklin County Line to proposed Georgetown Bypass near Great Crossings.</u>	.000	7.100
<u>Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.</u>	.000	3.400
<u>US 460B - From US 25 via US 460 (Georgetown Bypass) to US 62/US 460.</u>	.000	2.891
<u>US 460 - From US 62/US 460B to Bourbon County Line.</u>	8.583	15.421
<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>	6.246	17.850
<u>US 60 - From KY 55 South (Taylorsville Road) via Midland Trail and Main Street to KY 55 North (Boone Station Road).</u>	8.589	11.398
<u>KY 53 - From I-64 to US 60 (Frankfort Road) via Mt Eden Road.</u>	6.180	7.978
<u>US 421 - From Henry County Line to Henry County Line.</u>	.000	.661
<u>(97) Simpson County:</u>		
<u>US 31W - From south limits of I-65 Interchange to KY 100.</u>	2.300	6.488
<u>KY 100 - From US 31W Mainline to the I-65 ramps east of I-65.</u>	9.675	12.875
<u>(98) Spencer County:</u>		
<u>US 31E - From Nelson County Line to Bullitt County Line.</u>	.000	2.433
<u>(99) Taylor County:</u>		
<u>KY 55 - From Adair County Line to US 68 (Broadway).</u>	.000	10.293
<u>US 68 - From KY 55 via Broadway to Marion County Line.</u>	4.939	13.600
<u>(100) Todd County:</u>		
<u>US 41 - From Tennessee State Line to Christian County Line.</u>	.000	12.458
<u>US 79 - From Tennessee State Line to Logan County Line.</u>	.000	10.606
<u>US 68 - From Christian County Line to Logan County Line.</u>	.000	14.060
<u>(101) Trigg County:</u>		
<u>US 68 - From Marshall County Line to Christian County Line.</u>	.000	28.224
<u>(102) Trimble County:</u>		
<u>US 421 - From Henry County Line to US 42 South.</u>	.000	6.704
<u>US 42 - From US 421 South in Bedford to US 421 North in Bedford.</u>	8.078	8.249
<u>US 421 - From US 42 North to Indiana State Line.</u>	6.704	19.287
<u>(103) Union County:</u>		
<u>KY 56 - From Illinois State Line to proposed Morganfield Bypass.</u>	.000	11.600
<u>KY 56 - From existing US 56 via proposed Bypass to US 60.</u>	.000	1.400
<u>US 60 - From Crittenden County Line to proposed Morganfield Bypass.</u>	.000	15.500
<u>US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield.</u>	.000	2.900
<u>US 60 - From proposed Bypass east of Morganfield to Henderson County Line.</u>	18.100	26.069
<u>KY 109 - From Webster County Line to US 60.</u>	.000	1.536
<u>(104) Warren County:</u>		
<u>KY 101 - From I-65 to US 31W.</u>	7.861	11.641
<u>US 31W - From KY 101 south to KY 101 north.</u>	27.869	28.557
<u>KY 101 - From US 31W to Edmonson County Line.</u>	11.641	12.850
<u>US 68 - From Logan County Line to US 31W.</u>	.000	13.060
<u>US 31W - From US 68 to KY 446 Overpass.</u>	14.670	17.569
<u>KY 446 - From US 31W to I-65.</u>	.000	1.090
<u>KY 880 - From KY 185 to US 68.</u>	.000	5.128
<u>KY 185 - From KY 880 to US 68.</u>	.000	.292
<u>US 231 - From Allen County Line to I-65.</u>	.000	9.106
<u>(105) Washington County:</u>		
<u>KY 55 - From Marion County Line to US 150.</u>	.000	4.551
<u>KY 555 - From US 150 to north end of Bluegrass Parkway Interchange.</u>	.000	14.738
<u>US 150 - From Nelson County Line to Boyle County Line.</u>	.000	21.359
<u>(106) Wayne County:</u>		
<u>KY 90 - From Clinton County Line to Pulaski County Line.</u>	.000	25.235
<u>(107) Webster County:</u>		
<u>US 41A - From Hopkins County Line to KY 670.</u>	.000	1.324

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<u>KY 670 - From US 41A to KY 109.</u>	<u>.000</u>	<u>2.712</u>
<u>KY 109 - From KY 670 to Union County Line.</u>	<u>2.876</u>	<u>14.664</u>
<u>(108) Whitley County:</u>		
<u>KY 90 - From McCreary County Line to US 25W.</u>	<u>.000</u>	<u>8.328</u>
<u>US 25W - From KY 90 to east limits of I-75 ramps.</u>	<u>22.183</u>	<u>29.677</u>
<u>KY 90 - From US 25W along proposed alignment to Knox County Line.</u>	<u>.000</u>	<u>2.000</u>
<u>(109) Wolfe County:</u>		
<u>KY 15 - From Breathitt County Line to KY 191.</u>	<u>.000</u>	<u>9.515</u>
<u>KY 15S - From KY 15 to Mountain Parkway.</u>	<u>.000</u>	<u>1.054</u>
<u>KY 11 - From Lee County Line to Powell County Line.</u>	<u>.000</u>	<u>5.317</u>
<u>KY 191 - From KY 15 Spur to KY 203.</u>	<u>.000</u>	<u>10.342</u>
<u>KY 203 - From KY 191 to Morgan County Line.</u>	<u>.000</u>	<u>1.323</u>
<u>(110) Woodford County:</u>		
<u>US 60 - From Franklin County Line to Fayette County Line.</u>	<u>.000</u>	<u>13.039</u>

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
 FRED N. MUDGE, Secretary

APPROVED BY AGENCY: February 12, 1996
 FILED WITH LRC: February 13, 1996 at noon

**PUBLIC PROTECTION AND REGULATION CABINET
 Department of Mines and Minerals
 Division of Oil and Gas
 (Amended After Hearing)**

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

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 353.540, 353.550, 353.570, **353.590**, 353.5901, 353.595, 353.597

NECESSITY AND FUNCTION: KRS 353.5901(1) requires well operators to submit to the Department of Mines and Minerals an operations and reclamation proposal with regard to all tracts on which there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed. This administrative regulation specifies the content of the operations and reclamation proposal, creates the form on which that proposal is to be filed and is applicable only to tracts on which the ownership of the surface has been completely severed from that of the oil and gas.

Section 1. Definitions. The definitions set out in KRS 353.510 and those set out **in this section [below]** shall apply to this administrative regulation:

(1) "Surface owner" means the person in whose name is **recorded** [~~registered~~] the surface of the land subject to disturbance by drilling operations and who is assessed property taxes by the property valuation administrator of the county where the land is located.

(2) "Cross drain" means an open ditch, constructed across the roadway, to carry off road surface water and which is not intended to replace culverts **or prohibit vehicular traffic.**

(3) "Filter strip" means a natural vegetative strip, left undisturbed, between the disturbed construction area and a water course, and which acts as a buffer area to catch sediment before it enters the water course.

(4) "Diversion ditch" means a channel or ridge constructed across a slope for diverting surface runoff.

Section 2. **(1)(a)** The operations and reclamation proposal shall be filed on Form ED-10, entitled "Plan to Prevent Erosion of and Sedimentation from a Well Site," which form, dated November 15, 1995, is filed and incorporated herein by reference.

(b) Copies of the form may be obtained from the Department of Mines and Minerals, P. O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) In addition to the requirements set out in KRS 353.5901(1), the following information shall be set out on the Form ED-10:

(a) [~~(4)~~] The operator's name, surface owner's name, **addresses** and telephone numbers, the county in which the well is proposed to be drilled, and the well number;

(b) [~~(2)~~] A listing or description of fertilizers and soil amendments and seed or trees planted for each affected area requiring revegetation treatment and the types and amounts per acre of seed and trees planted;

(c) [~~(3)~~] A detailed drawing of the road, well location and proposed area involved, which shall be in sufficient detail to allow ready identification of surface features.

1. The surface owner's tract(s) shall be identified on this drawing, which shall also indicate the acres to be disturbed;

2. The drawing may be made over an enlarged section of the United States Geological Survey (USGS) 1 :24000 topographic map and may be enlarged to approximately 1"= 400' and be submitted on an eight and one-half (8 1/2) inches by fourteen (14) inch sheet using the symbols shown on Form ED-10 for the following:

- | | |
|-------------------|--|
| - Road | - Diversion |
| - Existing fence | - Spring |
| - Planned fence | - Drain pipe, with size in inches |
| - Stream | - Waterway |
| - Open ditch | - Cross drain |
| - Rock | - Artificial filter strip |
| - North arrow | - Pit: cut walls |
| - Buildings | - Pit: compacted fill walls |
| - Water wells | - Area for land application of pit waste |
| - Drill site | - Tanks |
| - Gathering lines | - Storage facilities |

3. The drawing shall have a legend with the operator's name, the scale of the map, the well name and number, and the lease name and the surface owner's name.

(3) [~~(4)~~] Signatory sections for the operator and surface owner in the following manner:

(a) The name and title of the operator shall be indicated and his signature notarized, which signature shall be either that of an officer

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of the company or of some other person who holds a duly recorded power of attorney to execute documents, a copy of which power of attorney shall be filed with the division. If the prospective operator is an individual, the signatory shall be in the same name as the applicant's or a power of attorney to execute documents shall be submitted to the division if the signatory is someone other than the applicant;

(b) The surface owner's name shall be indicated and his signature notarized if he approves of the operations and reclamation proposal, together with any attachments submitted with it.

Section 3. Unsigned Reclamation Forms. If the owner of the surface of the severed minerals tract is unwilling or for some other reason has failed to execute Form ED-10, the operator shall provide the following at the time the application for permit is filed, in accordance with KRS 353.5901:

(1) A copy of the certified mail receipt verifying the operations and reclamation proposal and plat were mailed to and received by the surface owner or evidence of refusal of the operations and reclamation proposal.

(2) If the surface owner cannot be reached at the last known address of record, and certified mail is marked undeliverable or unknown, the operator shall publish a request for information on the whereabouts of the surface owner, which publication shall be made two (2) consecutive times in a local newspaper in the county where the proposed well is located ~~[of the surface owner's last known address of record]~~ and once in a newspaper with statewide distribution.

(a) The request for information shall briefly describe the intended construction activity of the operator, as set out in the operations and reclamation proposal;

(b) A copy of the certified mail receipt verifying that the operations and reclamation proposal and plat were mailed to the surface owner, the original unclaimed envelope containing the operations and reclamation proposal and plat, and copies of the published requests for information shall be attached with the request for mediation, authorized in KRS 353.5901(3), as evidence of efforts made to locate the surface owner.

Section 4. Mediation of Dispute. (1) Upon his receipt of a request for mediation, proof of notification or attempted notification and copies of the published requests for information, if required by Section 3 of this administrative regulation, and the mediation fee required in KRS 353.5901(4), the mediator shall issue an Order Scheduling Mediation and send it by certified mail to the well operator and all surface owners of areas to be disturbed by drilling who have not agreed to the operations and reclamation proposal.

(2) The surface owner may file with the division a request for mediation at any time after he has received from the operator the proposed operations and reclamation proposal, but only after the operator has filed his request for mediation. The surface owner's request for mediation shall include a copy of the operations and reclamation proposal provided him by the operator and a \$100 mediation fee, in accordance with KRS 353.5901(2)(b).

(3) If the surface owner does not file his mediation fee within the time and in the manner required in the Order Scheduling Mediation, he shall be deemed to have failed to satisfy the statutory requirements applicable to mediation, and the mediator shall file a report noting such failure and recommending the acceptance of the operator's operations and reclamation proposal.

(4) ~~(3)~~ The mediator may not settle damage claims or make any determinations regarding them in his report. However, information presented by the operator or surface owner as to such factors as costs incurred by either party and ~~[]~~ the loss of minerals or surface damage may be utilized by the mediator in recommending the placement of roads, pits or other construction and reclamation activities in a manner which has the least adverse surface impact.

(5) If the operator withdraws his application for a permit to drill, deepen, or reopen a well after receipt by the division of the surface owner's mediation fee, that fee shall be refunded to the surface owner.

Section 5. As an attachment to the permit application required in KRS 353.590, the operator shall submit a copy of the deed of conveyance or lease which he believes supports his right to enter and conduct drilling operations or submit with his application the written consent of the surface landowner to conduct such operations. The director shall include that attachment as a part of the permanent well file; however, if a dispute arises over the validity of the document, the division shall not adjudicate that dispute ~~[resolution of that dispute shall be undertaken by the circuit court in the county in which the well is located].~~

Section 6. (1) The construction of the well site, including roads, pits, tanks, lines or other areas disturbed, shall be performed by the operator in accordance with the operations and reclamation proposal. All cuts and fills shall have side slopes that are stable for the soil or fill material involved. The vertical grades shall be as low as reasonably practicable and compatible with topography. If the well produces and the site is kept open for long-term use for well servicing and for oil and gas removal, the operator shall:

(a) Maintain access roads in such a manner as to allow access by the operator without causing unreasonable settlement of the roadbed or slides of the cut slopes, and provide that maintenance ~~[is conducted]~~ in accordance with the operations and reclamations proposal;

(b) Establish drainage to adequately accept runoff from access roads, the well site or other areas in a manner which prevents unreasonable interference with the surface owner's property, roads, farming operations, buildings, and establish that drainage ~~[is conducted]~~ in accordance with the operations and reclamations proposal;

(c) Repair access roads, the well site area, or pits damaged by events such as floods or landslides, or excessive settlement of the embankment as soon as practicable after the damage has occurred; however, the operator shall not be responsible for damage attributable to another party's use of the access road not relating to the drilling, construction or operation of the well by the operator.

(2) Pit closures shall conform to applicable water and waste management statutes and ~~[quality]~~ administrative regulations set out in KRS Chapter 224 and 401 KAR Chapters 4 through 48 ~~[established in 401 KAR Chapter 5].~~ Jurisdiction for the enforcement of said administrative regulations shall remain exclusively vested in the Natural Resources and Environmental Protection Cabinet ~~[located at 14 Reilly Road, Frankfort, Kentucky 40601].~~

(3)(a) Hazardous waste, solid waste, and special waste, as defined by KRS 224.01-010, that is generated from well site activities shall be stored and disposed of in accordance with KRS Chapter 224 and 401 KAR Chapters 30 through 48. Releases of hazardous substances, pollutants, and contaminants, as defined by KRS 224.01-400, shall be characterized and the effect of the release corrected in accordance with KRS 224.01-400 and 401 KAR 100:050. Releases of petroleum or petroleum products from a source other than a petroleum storage tank shall be characterized and the effect of the release corrected in accordance with KRS 224.01-405 and implementing administrative regulations; ~~[Disposal of drilling and completion pit waste shall conform to applicable special waste administrative regulations established in 401 KAR Chapter 46.]~~

(b) Jurisdiction for the enforcement of the statutes and ~~[said]~~ administrative regulations referenced in paragraph (a) of this subsection shall remain exclusively vested in the Natural Resources and Environmental Protection Cabinet.

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~~[(4) All trash, cans and other construction-related materials and debris used or generated by the operator or his contractors shall be removed from the site and placed in an appropriate manner, in accordance with solid and hazardous waste regulations after all phases of drilling and after final reclamation. All well-related materials will be removed upon plugging and cessation of operations.]~~

Section 7. The operator shall notify the division by written notice when final reclamation and plugging have been completed. The bond required in KRS 353.590(5) shall not be released until division inspectors have made an inspection of the well site one (1) year after the date of notification from the operator of the final completion and have filed a report to the director documenting that the following have occurred:

(1) All areas disturbed by the operator have been secured in a manner to prevent runoff, sedimentation, or settlement of the roadway, sliding of cut slopes or any fill material.

(2) A diverse and effective permanent vegetative cover has been established.

(3) Any matters relating to settlement, inadequate vegetative cover or erosion have been corrected.

Section 8. Transfer of Wells Having Existing Reclamation Plans.

(1) Prior to transferring a well located on a severed minerals tract and for which an approved operations and reclamation proposal is on file with the division, the operator shall:

(a) Provide the successor operator a copy of the approved reclamation forms and attachments on file with the division before Form ED-13, entitled "Well Transfer," revised on April 16, 1990, is signed. Copies of this form, which is filed and incorporated herein by reference, may be obtained from the Department of Mines and Minerals, P. O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.;

(b) Advise the successor operator of any reclamation responsibility the transferring operator had with regard to the well and related surface disturbance;

(c) Secure from the successor operator a letter indicating he has received from ~~[the reclamation form submitted to him by]~~ the transferring operator a copy of Form ED-10 and that he is willing to accept responsibility for the reclamation of the well site~~;~~ and other surface disturbances related to the operation of the well;

(d) Submit to the division the executed Form ED-13, applicable fee, a copy of Form ED-10 and the letter of the successor operator's agreement to accept responsibility for reclamation in the manner set forth on Form ED-10;

(e) Provide the surface owner with a copy of Form ED-13 when he submits it to the division.

(2) The division shall not transfer the well until the requirements of this section are satisfied. The transferring and successor operators shall be advised in writing of the transfer of the well.

Section 9. ~~[Requirements for Testing Water. Prior to and after the drilling of a well or construction of the well site, access road, or performance of any reclamation activities described in the operations and reclamation proposal, the operator or the surface owner may submit to the division the results of drinking water tests performed by a certified drinking water laboratory. These tests may be of surface or underground sources of water used for domestic, agricultural, industrial, or other legitimate use on the surface owner's land. Water sample test procedures shall satisfy the following requirements before being submitted to the division:~~

~~(1) The surface owner or the operator shall be notified by certified mail or personal delivery not less than ten (10) working days prior to a water sample collection's being taken preparatory to a test being performed by the laboratory and this notice shall include:~~

~~(a) The name, address, telephone number of the surface owner or operator, and location of the proposed test;~~

~~(b) The name, address and telephone number of the certified drinking water laboratory performing the test;~~

~~(c) Notice to the other party that he or his representative may be present when the water sample collection is taken;~~

~~(d) A copy of the certified mail receipt verifying that the notice of the water test was received; if service is made by personal delivery, the date and time of day the person received the notice;~~

~~(e) The copy of the test results shall be filed on sheets or forms not larger than eight and one half (8 1/2) inches by fourteen (14) inches; and~~

~~(f) The laboratory performing the drinking water test shall be a laboratory certified to perform such tests by the Kentucky Department for Environmental Protection, Division of Water. A copy of drinking water laboratories certified to operate in Kentucky may be obtained from the Department of Mines and Minerals, P. O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.~~

~~(2) If the surface owner reasonably believes his water has been substantially disrupted by contamination, diminution, or interruption proximately resulting from the operator's activities, he shall document that belief in writing to the division, and if a follow up water test was obtained by the surface owner, the results of such a test shall be provided to the division and to the well operator and shall be performed in accordance with subsection (1) of this section.~~

~~(3) If the division receives a written report from the surface owner concerning disruption of his water, the division shall investigate such report, and if the director finds that the disruption can be corrected by means of reasonable remedial action at the well site or reclamation area, he shall require the operator to immediately take such remedial action. However, the division shall not resolve claims for, or be involved in the mediation of claims or complaints regarding, water replacement. If the surface owner is dissatisfied with the efforts performed by the operator concerning any matter impacting the attempted correction of water substantially disrupted, he may take appropriate civil action.~~

~~(4) The division shall not accept any water test results or any subsequent follow up test results unless they satisfy the requirements of subsection (1) of this section. The division shall not interpret test results. Any such interpretation shall be provided by the certified drinking water laboratory performing the test or by other duly qualified expert.~~

~~(5) Copies of water tests filed with the division shall simultaneously be filed with the operator or surface owner. When a water test is performed, the surface owner or the operator shall be allowed to test at the same time if he so desires, and such test results may also be submitted to the division. If the surface owner or operator submits water test results to the division, either party may object to the other's test results within thirty (30) days of the postmarked date the results were mailed to the objecting party.~~

Section 10.] Enforcement. (1) If a field inspection indicates there is noncompliance with the approved operations and reclamation proposal or the requirements of Section 6(1)(a), (b), and (c) of this administrative regulation, a ~~[verbal or]~~ written notice of violation describing the [that] noncompliance shall be given to the operator, together with a statement of the action required to correct the noncompliance. A written notice of violation may allow the operator up to forty-five (45) days to correct the violation. An operator may file for an extension of time to correct a violation by submitting a letter to the director describing the need for that extension. If the director concludes that the request is reasonable and that an extension of time will not violate the requirements of this administrative regulation or applicable statutes, the director may grant the request for extension of time. ~~[who fails to make such corrections within a reasonable time frame shall receive a notice of violation issued by the inspector, who shall allow the operator forty five (45) days to correct the violation.]~~ The operator's

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bond may be forfeited to the department's plugging fund, pursuant to KRS 353.590(7), if he fails to make required corrections.

(2) ~~[If the inspector observes a dangerous or environmentally damaging situation, he shall require immediate remedial action.]~~ An operator who is determined by the director to be in noncompliance with any section of this administrative regulation or who fails to abate any noncompliance of the approved operations and reclamation plan is subject to ~~[not complying with that requirement in a reasonable manner may face]~~ the penalties described in KRS 353.991.

LAURA M. DOUGLAS, Secretary
JOHN FRANKLIN, Commissioner

APPROVED BY AGENCY: February 8, 1996
FILED WITH LRC: February 9, 1996 at 9 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of State and Local Health Administration
(Amended After Hearing)

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755 ~~[211.000, 212.170, 1994 Ky. Acts ch. 336]~~

NECESSITY AND FUNCTION: KRS ~~[211.000]~~ 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 ~~[House Bill 634]~~ provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs the leave provisions applicable for employees of local health departments. These provisions address hours of work, earning of annual and sick time, holiday schedules, other leave provisions and the earning of compensatory time.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) ~~[The normal work day shall be 8 a.m. to 4:30 p.m. Monday through Friday.]~~

~~(b)~~ The appointing authority shall establish the hours of work and days of work, [other than normal,] of the agency or specific employees and may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) All [The] hours worked in excess of the thirty-seven and one-half (37.5) hours during the established [standard] work week shall be approved by the appointing authority and [are] subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

Section 2. Earning of Annual Leave. (1) Each full-time employee except seasonal, temporary, and emergency employees shall be allowed to earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year
15 years & over	6.1 hours per pay period/158.6 hours per year
20 years & over	7.0 hours per pay period/182 hours per year

(2) Annual leave for full-time employees shall accrue only when an employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Each part-time employee except a seasonal, temporary, or emergency employee, designated as serving on a part-time 100 hour basis, who works an average of 100 hours a month shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 years & over	3.6 hours per pay period/93.6 hours per year
20 years & over	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for determining the rate of earning ~~[the purpose of allowing]~~ annual leave for designated part-time 100 hour employees, only those months during [in] which the employee was designated as a full-time, part-time 100 hour [worked at least 100 hours] or was on educational leave with pay shall be used. ~~[Employees designated as part-time 100 hour employees who work less than 100 hours a month shall not earn annual leave for that month.]~~

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

(6) The maximum amount of annual leave earned by full-time employees that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(7) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 - 5 years	120 hours
5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

(8) ~~[If an employee has not requested payment]~~ Annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following [at] the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon request and approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

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

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

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(4) Employees shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or changes from full-time or part-time 100 hour to part time. [~~granted leave without pay in excess of three (3) pay periods.~~]

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave, not to exceed the maximum amount allowable.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) Absences due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who works an average 100 hours or more per month shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period [~~month~~] following the pay period [~~month~~] in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour [~~an~~] employee with sufficient leave credit, if the employee:

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

(b) Is disabled by sickness or injury;

(c) Is required to provide [~~personal~~] care for a sick or injured member of his immediate family;

(d) If an employee would jeopardize the health of others at his duty post because of exposure to a contagious disease; [~~or~~]

(e) Has lost by death a member of the employee's immediate family; or

(f) Is required to take a member of the employee's immediate family for medical, psychiatric, dental, or optical examination or treatment.

(2) Sick leave granted for death in the employee's immediate family shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) If possible, an employee shall request sick leave absence with or without pay prior to the intended use.

(4) If an employee is unexpectedly required to be absent from work in case of illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or disciplinary action.

(5) An employee may be required by the appointing authority to present a statement in the form of personal affidavit, physician's statement, or other statement certifying to the incapacity, examination,

and treatment during the time for which sick leave was taken.

(6) If an employee requests leave in excess of five (5) working days a statement from the employees' physician shall accompany the request for leave. The physician statement shall contain the following:

(a) In the physician's judgement the employee is incapable of performing the essential duties of the job;

(b) Length of time that the physician would estimate that the employee's illness or disability will last;

(c) Restrictions which would render the employee in the physician's judgement incapable of performing the essential duties of the job; and

(d) Special considerations that the physician recommends be applied to accommodate the employee once released to return to work.

(7) An appointing authority may place an employee, who fails to provide a medical statement upon request, on sick leave if:

(a) The employee's health might jeopardize others; or

(b) The employee's health prevents performance of his duties and responsibilities.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10) Former employees who are reinstated or reemployed shall have their previous accumulated and unused sick leave balances reinstated.

(11) Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy. Maternity leave shall not exceed seven (7) pay periods, unless the appointing authority approves additional maternity leave provided the total leave does not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available.

(a) If sick leave is not available, the employee shall use accumulated annual and compensatory time.

(b) If all leave credit is exhausted, the employee shall be placed on leave without pay.

(3) The employee shall submit a written request for maternity absence which shall include a doctor's statement indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's doctor may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond the normal seven (7) pay periods.

Section 7. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon request of an employee for reasons provided for in Section 6 of this administrative regulation and this section.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, provided the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic doctor's

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statements during the sick leave without pay period attesting to the employee's inability to perform job duties.

Section 8. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit.

(2) If an employee on approved sick leave without pay has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If there is no available position which the employee is qualified or is willing to accept, the employee shall be laid off in accordance with administrative regulation 902 KAR 8:080.

(3) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested by the appointing authority to return to work at least ten (10) days prior to the expiration of sick leave without pay, may be dismissed by the appointing authority.

Section 9. Sharing of Sick Leave. (1) An employee who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee who is authorized to receive sick leave.

(2) The appointing authority, may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practicing physician; and

(c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances; and

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section.

Section 10. Court Leave. An employee shall be entitled to a leave of absence from duties, without loss of pay or time, on days during which the employee is subpoenaed by a court to serve as a juror or witness except in those cases where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall

return to work.

Section 11. Military Leave. (1) An employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his duties without the loss of pay or time, upon request, to serve under orders on training duty for a period not to exceed seventy five (75) hours in any one (1) calendar year. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

Section 12. Voting Leave. The appointing authority shall allow each employee ample time to vote. The absence shall not be charged against accumulated leave.

Section 13. Special Leave of Absence. (1) The appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year to an employee who has exhausted all accumulated annual, compensatory or sick leave credit, if applicable.

(2) An appointing authority, with the approval of the department, may grant a leave of absence with or without pay for a period not to exceed twenty-six (26) pay periods for the following purposes:

(a) Agency directed or approved educational leave to attend a [Assignment to and attendance at] college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the agency; or

(b) Purposes other than those provided by this section [the above] which are deemed to be in the best interest of the agency.

~~[(3) An agency shall comply with the Family and Medical Leave Act, PL 103-3, if applicable.~~

~~[(4) Special leave of absence approved under this section may be continued for an additional period not to exceed twenty-six (26) pay periods with the approval of the department.]~~

Section 14. Family and Medical Leave. An agency shall comply with the Family and Medical Leave Act, PL 103-3 and CFR 29 Part 825, if applicable.

Section 15. Absence Without Leave. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence. The absence without leave may constitute grounds for disciplinary action.

Section 16. ~~[15.]~~ Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) The third Monday in February;

(d) One-half (1/2) day for Good Friday;

(e) The last Monday in May;

(f) The fourth day of July;

(g) The first Monday in September;

(h) The fourth Thursday in November plus one (1) extra day;

(i) The twenty-fifth of December and one (1) extra day;

(j) Presidential election day.

(2) If any of the days enumerated in subsection (1) of this section [above] falls on a Saturday, the preceding Friday shall be

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observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 17. ~~[46.]~~ Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337 [full-time employee] authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for all excess time worked [that the employee does not receive overtime pay subject to the provisions of the Fair Labor Standards Act, 29 USC 206, and Kentucky Wage and Labor Law KRS Chapter 337]. The maximum amount of compensatory time that can be accumulated shall be 200 hours.

(2) ~~[Effective July 1, 1996, an employee determined to be nonexempt under the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 377 shall not be allowed to earn compensatory provided for under this section.]~~

~~(3)~~ An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

~~(3)~~ [4] A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours shall be paid at the employees current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337.

Section 18. ~~[47.]~~ Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) ~~[An agency, with the approval of the department, may elect to compensate employees at the rate of time and one-half (1/2) for each hour worked in excess of forty (40) hours per week.]~~

(4) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and reduce the employee's compensatory leave balance accordingly.

~~(5) The appointing authority may direct an employee to use accumulated compensatory time to reduce accumulation to an acceptable level.]~~

(4) ~~[(6)]~~ Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) ~~[(7)]~~ Upon the death of an employee, the employee's estate shall be paid for any unused accumulated compensatory time.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 30, 1996

FILED WITH LRC: January 30, 1996 at 4 p.m.

PROPOSED AMENDMENTS RECEIVED AS OF NOON, FEBRUARY 15, 1996

COUNCIL ON HIGHER EDUCATION
(Amendment)

13 KAR 2:045. Determination of residency status [Classification of residency] for admission and tuition assessment purposes.

RELATES TO: KRS 164.020, 13 KAR 2:020

STATUTORY AUTHORITY: KRS 164.020, 164.030

NECESSITY AND FUNCTION: Public institutions of higher education were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to higher education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to higher education is provided so far as feasible at reasonable cost to residents of the state. It is the long-standing practice of the Council on Higher Education to require students who are not Kentucky residents to meet higher admission standards and to pay a higher level of tuition than resident students. The Commonwealth of Kentucky uses residency requirements to determine items such as voting rights, income tax liability, and employment in certain occupations. The requirements for residency vary in form and substance for each of these uses. The purpose of this administrative regulation is to establish a process and corresponding guidelines [criteria] for the determination of residency status for [classification of] students seeking admission to, or who are enrolled in, public institutions of higher education. Furthermore, it is the intent of the Council on Higher Education that this administrative regulation be interpreted and applied in a uniform manner, as described herein, in determining whether students shall be classified as residents or nonresidents for admission and tuition assessment purposes.

Section 1. Definitions. The language of this administrative regulation for a determination of residency status for admission and tuition assessment purposes [on residency classification] contains some legal terms as well as everyday terms which have specialized meaning in the determination of residency status for admission and tuition assessment purposes. The following definitions apply in the interpretation and application of this administrative regulation:

(1) "Academic term" means a division of the school year during which a course of studies is offered: [given, e.g.,] semester, quarter, or summer term as defined by the institution in a manner consistent with subsection (16) of this section [intersession].

(2) "Continues enrollment" means a person is [at a college or colleges shall be deemed "continuous" if the person claiming "continuous" enrollment continues to be] enrolled in the Kentucky system of state-supported colleges and universities at the same degree level for consecutive terms, [excluding summer term,] since the beginning of the period for which continuous enrollment is claimed. A [The] sequence of continuous enrollment is broken if the student fails to enroll for a consecutive academic term excluding summer term, except under extenuating circumstances beyond the student's control, such as [e.g.,] serious personal illness or injury, or illness or death of a parent.

(3) "Determination of residency status" means the process and decision by which a person is classified as a Kentucky resident or as a nonresident in accordance with this administrative regulation.

(4) "Degree level" means one (1) of the following:

(a) [Undergraduate (Enrollment in courses or programs which could result in the award of a baccalaureate degree or lower including enrollments in courses by nondegree seeking postbaccalaureate students)];

(b) [Graduate (Enrollment in courses or programs which result in a graduate [postbaccalaureate] degree or graduate certification other than the first-professional degrees in law, medicine, or [and] dentistry)]; or

(c) [Professional (Enrollment in courses or programs which result in a professional degree in law, medicine, [or] dentistry, or "Pharm D.")];

(5) [(4) The term] "Dependent person" means a person who is unable to meet all of the criteria listed in subsection (10) [(9)] of this section.

(6) [(5)] "Documentation" means [refers to the submission of] source documents, such as [e.g.,] official letters, papers, or sworn statements. [As a general rule, evidence cited as the basis for domicile shall be documented, and the required documentation shall accompany the application for residency classification.]

(7) [(6) The term] "Domicile" means a person's true, fixed, and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere. ["Legal residence" and domicile convey the same notion of permanence and are used interchangeably.]

(8) [(7)] "Full-time employment" means employment for at least forty-eight (48) [work] weeks at an average of at least thirty (30) hours per week.

(9) [(8)] "Half-time enrollment" means any enrollment during an academic term which is equal to one-half (1/2) of full time as determined by the [governing board of the] institution.

(10) [(9) The term] "Independent person" means a person who demonstrates financial independence from parents and persons other than a spouse and who can meet the criteria in Section 2(2)(d) of this administrative regulation. [who meets all of the following criteria. An independent person is one:

(a) Whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon parent(s); and

(c) Whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance.]

(11) [(10) The terms] "Institution", "institution of higher education", or "college" refer to all institutions [public or private,] offering instruction and conferring degrees or diplomas beyond the secondary school level, such as four (4) year colleges or universities, [seminaries,] two (2) year institutions including [(community colleges, and junior colleges,)] and postsecondary vocational-technical schools unless the type of institution shall be expressly stated.

(12) "Kentucky residency" or "Kentucky resident" is the result of a determination by an institution that a person is a resident of Kentucky for the purpose of tuition assessment and for the purpose of admission to that institution, if applicable.

(13) [(11) The term] "Nonresident" means a person who is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who has not met the criteria for establishing Kentucky residency as defined in this administrative regulation.

(14) [(12) The term] "Parent" means one (1) of the following:

(A) A person's father or mother; or

(B) A court-appointed legal guardian recognized by an appropriate court within the United States in which there is a relinquishment of the rights of the parents. The term "parent" shall not apply if a [the] guardianship has been established primarily for the purpose of conferring the status of Kentucky residency [resident] on a person.

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(15) "Residence" or "residency" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 2 of this administrative regulation.

~~(13) The term "resident" means a person who is a legal resident of Kentucky based upon fulfilling the criteria for establishing residency as set out in Section 2 of this administrative regulation.~~

(16) "Summer term" means the sum of the summer session enrollment periods following the spring academic term and preceding the fall academic term as defined by an institution of higher education.

(17) "Sustenance" means living expenses including room, board, maintenance, transportation, and educational expenses such as tuition, fees, books, and supplies.

Section 2. Guidelines for Determination of Residency Status.

(1)(a) ~~An initial determination [initial classification] of residency status for admission and tuition assessment purposes shall be [determined] based upon the facts in existence [existing] when the credentials established by an institution for [conditions governing] admission for a specific academic term have been received [met].~~

(b) ~~An initial determination of residency status is [determinations generally are] made on:~~

- ~~1. The basis of information derived from admissions materials;~~
- ~~2. Other materials required by an institution and which are consistent with this administrative regulation; or~~
- ~~3. Other information available to the institution.~~

~~(c) An undergraduate student whose admissions records show the student to be a graduate of an out-of-state high school shall be [is] presumed to be a nonresident unless the person demonstrates Kentucky domicile and residency by clear and convincing evidence. An institution shall make a determination that a student is a nonresident in the absence of such evidence.~~

~~(d) [and shall be initially so classified.] A student whose admissions records indicate the student's residence [domicile] to be outside of Kentucky at the time of application for admission is presumed to be a nonresident [and shall be initially so classified].~~

~~(2) A determination shall first be made of whether a student is dependent or independent. In determining the dependent or independent status of a person, the following information shall be considered as well as any other relevant information available at the time the determination is made: [The domicile of a dependent person is that of either parent. The domicile of the parent shall be determined in the same manner as the domicile of an independent person.~~

~~(3) The domicile of a dependent person whose parents are divorced, separated, or otherwise living apart shall be presumed to be Kentucky if either parent is a resident of the Commonwealth regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.~~

~~(4) Evidence submitted on behalf of a dependent person shall pertain to the domicile of the parent(s).~~

~~(a) A person claiming independent status shall document that [proclaimed] status and demonstrate that the person [domicile in Kentucky has been established]:~~

- ~~1. Has not been claimed as a dependent on the federal or state tax returns for the year preceding the date of application for a determination of residency status; or~~
- ~~2. Is no longer claimed by a parent or other person as a dependent or an exemption for federal and state tax purposes; and~~
- ~~3. Has financial earnings and resources independent of parents and persons other than a spouse necessary to provide for the person's own sustenance.~~

~~(b) 1. A [(5) Any] dependent person whose parent or parents are domiciled in and who are residents of [(e), having domicile in] this state, and who subsequently move(s) from this state, shall be considered a Kentucky resident for the purpose of this administrative regulation [entitled to classification as a resident] while in continuous~~

enrollment at the degree level in which currently enrolled.

~~2. If [When] continuous enrollment is broken or the current degree level is completed, the person's residency status [classification] shall be reassessed in accordance with [the appropriate sections of] this administrative regulation.~~

~~(c) [(6)] An independent person who moves to Kentucky and within twelve (12) months enrolls in an institution of higher education more than half time shall be presumed to have come to Kentucky primarily for educational purposes and [rather than to establish domicile in Kentucky. Such person] shall be presumed to be a nonresident and shall be so classified [as a nonresident] unless establishment of a Kentucky domicile and residency can be demonstrated to the satisfaction of the institution in a manner consistent with [in accordance with Section 3 of] this administrative regulation.~~

~~(d) [(7) Upon moving to this state.] An independent person who provides clear and convincing evidence of Kentucky domicile and residency shall be so classified as shall that person's [eligible for resident classification of self,] spouse[s,] or dependent children, notwithstanding the provisions of Section 2(2)(e) of this administrative regulation.~~

~~(e) [provided that any of these persons is not in this state primarily as a student.] A person who moves to Kentucky primarily for the purpose(s) of enrollment of either self, spouse, or a dependent in an institution of higher education shall not be granted Kentucky residency [resident classification] unless such person can demonstrate establishment of [a] Kentucky domicile and residency by clear and convincing evidence. [in accordance with Section 3 of this administrative regulation.]~~

~~(f) [(8)] If an independent person or the sole parent or both parents of a dependent person moves out-of-state, domicile and Kentucky residency, having been established [in Kentucky,] is retained until steps are taken to establish domicile and residency elsewhere.~~

~~(g) The same facts and conditions which are presumed in establishing [a] Kentucky domicile and residency are similarly presumed in determining when domicile and residency are established elsewhere. [a former Kentucky domicile has been abandoned. In the absence of clear and convincing evidence as to the domicile of an independent person who at one time had domicile in Kentucky, that]~~

~~(h) A person is presumed to have lost Kentucky domicile and residency upon a one (1) year continuous absence from the state unless the person asserting Kentucky domicile and residency can establish by clear and convincing evidence that Kentucky domicile and residency are maintained.~~

~~[(9) An individual shall not be deemed to have established domicile in this state solely by reason of marriage to a Kentucky resident. However, the fact of marriage to a Kentucky resident shall be deemed relevant evidence to be considered in ascertaining domiciliary intent. A student initially classified as a nonresident who marries a Kentucky resident shall be eligible for resident classification if the requisite criteria listed in Section 3 of this administrative regulation are met.]~~

~~(i) Upon [(10) Given] transfer to, or matriculation from, a [in, another] Kentucky public institution of higher education, a [the] student's residency status [classification] shall be reassessed by the receiving institution subject to the provisions for continuous enrollment.~~

~~(j) 1. [(11)] An individual or the spouse or dependent of an individual whose domicile and residency was Kentucky at the time of induction into the armed forces of the United States [military], and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status during the time of active service; or~~

~~2. [resident status] If the individual returns to this state within six (6) months of the date of discharge from active duty having met the provisions of subparagraph 1 of this paragraph, the student, spouse, and dependents shall retain Kentucky residency status.~~

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(k)1. ~~[(+2)]~~ A member or the spouse or dependent of a member of the armed forces of the United States stationed in Kentucky on active military orders shall be ~~[is]~~ considered a Kentucky resident ~~[domiciled in the state and shall be entitled to classification as a resident]~~ while the member is on active duty in this state pursuant to such orders.

2. A member or the spouse of the member, while in continuous attendance at the degree level in which currently enrolled, shall not lose Kentucky residency ~~[resident]~~ status when the member is thereafter transferred on military orders.

3. Individuals classified under this section shall be reassessed in accordance with the appropriate sections of this administrative regulation when the qualifying condition is terminated. The provision of this paragraph shall not apply ~~[This administrative regulation is invalid]~~ if the individual is stationed in Kentucky for the purpose of enrollment at an institution of higher education or is on temporary assignment of less than one (1) year.

~~[(+3) A dependent person whose parent is a member of the Armed Forces and stationed in this state on active duty pursuant to military orders shall be classified as a resident.]~~

4. The student, while in continuous attendance at the degree level in which currently enrolled, shall not lose Kentucky residency ~~[resident]~~ status when the parent is thereafter transferred on military orders.

5. If ~~[When]~~ continuous attendance is broken or the current degree level is completed, a ~~[the]~~ person's residency status ~~[classification]~~ shall be reassessed in accordance with the appropriate sections of this administrative regulation. This paragraph is not applicable ~~[subsection does not apply]~~ if the parent is stationed in Kentucky for the purpose of enrollment at an institution of higher education or is on a temporary assignment of less than one (1) year.

~~[(+1) A [(+4) Any] person holding a permanent residency visa or classified as a political refugee [has the capacity to remain in Kentucky indefinitely and] shall establish domicile and residency in the same manner as any other person.~~

2. Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency as stated in this section ~~[(+)]~~ prior to obtaining permanent status may be considered in establishing Kentucky domicile and residency.

~~[(m) A [(+5) Any] person holding a nonimmigrant visa with designation A, E, G, H, I, [or] L, or TN shall [may remain in Kentucky as long as the authorized purpose or established need continues and may] establish domicile and residency the same as any other person. [In assessing the residency status of such a person, other sections of this administrative regulation shall apply and the person's purpose and length of stay as well as other conditions governing presence in Kentucky shall be determined and considered. If this review justifies a resident classification, the person shall be classified as a resident for admission and tuition assessment purposes.]~~

~~[(n)1. A [(+6) Any] person holding a nonimmigrant visa with designations B, C, D, F, J, K or M does not have the capacity to remain in Kentucky indefinitely and may not attain Kentucky residency [resident] status for admission and tuition assessment purposes.~~

2. A person holding a visa as described in subparagraph 1 of this paragraph, but who is a dependent of a parent holding a visa as described in paragraph (m) of this subsection, shall be considered as holding the visa of the parent for the purpose of residency status.

3. If a person requesting a change in residency status becomes independent or if the status of the parent of a dependent person changes, the institution shall reassess residency.

~~[(o) [(+7)] Pursuant to KRS 164A.330 and 200 KAR 16:040, beneficiaries of a Kentucky Educational Savings Plan Trust shall be granted residency status [resident classification] for tuition purposes if:~~

1. ~~[(a)]~~ The beneficiary is covered under a vested participation agreement;

2. ~~[(b)]~~ The beneficiary has been a continuous resident of the

Commonwealth of Kentucky during the eight (8) year vestment period; and

3. ~~[(a)]~~ The beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution.

~~[(+8) No independent person shall be presumed to have gained resident status while being enrolled in any institution of higher education more than half time in the absence of clear and convincing evidence that the person has established domicile in Kentucky.]~~

~~[(p) Kentucky residency status [(+9) Domicile] shall not [ordinarily] be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or by acts which are performed as a matter of convenience. Mere physical presence in Kentucky [(including living with relatives or friends)] is not sufficient evidence of domicile and residency.~~

(3) The types of documentation and evidence used in a determination of residency status shall include but shall not be limited to the following:

(a)1. The domicile and residency of a dependent person are that of either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.

~~[Section 3. Types of Evidence to be Considered for Establishment of Domicile. (1) Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent. Initial classifications generally are made on the basis of information derived from admissions materials, and]~~

2. Individuals who enroll in college immediately following graduation from high school and remain enrolled are presumed to be ~~[treated as]~~ dependent persons unless the contrary is evident from the information submitted. In such cases, domicile may ~~[shall]~~ be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

3. The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be presumed to be Kentucky if either parent is domiciled in and is a Kentucky resident regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.

~~[(b)1. [(2)] A person claiming independent status shall document independent status consistent with [under Section 1(6) of] this administrative regulation and shall demonstrate by clear and convincing evidence that [domicile in] Kentucky domicile and residency have [has] been established [by that person's acts].~~

2. If an independent person asserts that ~~[domicile in] Kentucky domicile and residency have [has] been established, that [the] person has the burden of proving the [that] assertion by clear and convincing evidence.~~

3. No independent person classified as a nonresident shall be presumed to have gained Kentucky residency status while being enrolled in any institution of higher education more than half time in the absence of clear and convincing evidence that the person has established domicile and residency in Kentucky.

~~[(c) A [(3) The] determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. No single fact is paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile and residency.~~

~~[(d) [(4)] The following facts, although not conclusive, shall have probative value in support of a claim [by an independent person] for Kentucky residency [resident classification]:~~

1. ~~[(a)]~~ Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining domicile in Kentucky;

2. ~~[(b)]~~ Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding commencement of the academic term for which a classification of Kentucky residency is sought; [the last date for enrollment in the

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institution;]

3. ~~[(e)]~~ Filing of Kentucky resident income tax return for the calendar year preceding the date of application for a change in ~~[reclassification of]~~ residency status or payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

4. ~~[(d)]~~ Full-time employment of at least one (1) year while living in Kentucky;

5. ~~[(e)]~~ Attendance as a full-time, nonresident student at an out-of-state institution of higher education based on a determination by that school that the person is ~~[while determined to be]~~ a resident of Kentucky;

6. ~~[(f)]~~ Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with attendance at an institution of higher education following and only incidental to such change in domicile and residency;

7. Obtaining licensing or certification for professional and occupational purposes in Kentucky;

~~[(g)] Payment of occupational taxes in Kentucky;~~

8. ~~[(h)]~~ Payment of real property taxes in Kentucky;

9. ~~[(i)]~~ Payment of intangible personal property taxes in Kentucky;

10. ~~[(j)]~~ Ownership of real property in Kentucky, if the property was used by the student as a residence ~~[for at least six (6) months]~~ preceding the date of application for a determination ~~[reclassification]~~ of residency status;

11. ~~[(k)]~~ Long-term lease of ~~[at least twelve (12) consecutive months]~~ of noncollegiate housing;

12. ~~[(l)]~~ Kentucky automobile registration;

13. ~~[(m)]~~ Kentucky driver's license;

14. ~~[(n)]~~ Continued presence as a resident in Kentucky during vacation periods;

15. ~~[(o)]~~ Marriage to a Kentucky resident; and

16. ~~[(p)]~~ Registration as a Kentucky voter.

~~[(4)(a)]~~ A ~~[(6)]~~ ~~Documentation.~~ The determination of residency status ~~[domicile]~~ shall be based upon verifiable circumstances or actions, and a student may be required to submit original or notarized copies of any documents required or offered in support of a claim of Kentucky domicile and residency. ~~[relevant evidence pertaining to domicile. When reviewing the documentation submitted.]~~

~~[(b)]~~ Evidence cited as the basis for domicile and residency shall be documented, and the required documentation shall accompany the application for a change in a determination of residency status.

~~[(c)]~~ Institutions may request additional documentation to clarify the person's circumstances and to formulate a determination of residency status ~~[classification decision]~~ which considers all relevant facts.

Section 3. Penalty and Sanctions for ~~[(6)]~~ Submission of False Documents. (1) A student who gives incorrect or misleading information to institutional officials may be subject to criminal prosecution and to such disciplinary sanctions as may be imposed by the institution through a policy written and disseminated to students.

(2) A penalty or sanction ~~[which]~~ shall include but not necessarily be limited to the payment of nonresident tuition for each academic term for which tuition was assessed based on an improper determination of residency status. ~~[attended.]~~

Section 4. Determination of Residency Status by Institution. (1) A determination of residency status by an institution refers to:

(a) The determination reached by the institution at the time of consideration of admission including an initial determination and review of that decision by the institution conducted in accordance with university policy and consistent with this state administrative regulation; or

(b) A subsequent review of a request for a change in a determination of residency status by the institution whether initiated by the student, the institution, or the Council on Higher Education.

(2) Each institution shall designate the responsibility for a

determination of residency status at that institution.

~~[(3)]~~ ~~Responsibilities.~~ ~~[(1)]~~ ~~Institution responsibilities.~~ Each institution shall designate an administrative office or person with delegated day-to-day responsibility for administration of this ~~[classification]~~ administrative regulation. The designation of an administrative office or person shall be in writing setting forth the duties and responsibilities. A copy shall be provided to the Council on Higher Education.

~~[(4)]~~ ~~[and for evaluating and deciding student requests for reclassification.]~~ Each institution shall ~~[also]~~ establish by written policy filed with the Council on Higher Education a residency review committee, which shall be a standing committee, ~~[(hereafter the committee)]~~ to review, evaluate, and act upon:

(a) ~~[assist and recommend action on]~~ Student requests for a change in a determination of residency status; or

(b) A recommendation of the administrative office or person designated pursuant to subsection (3) of this section, that the residency review committee review, evaluate, and act upon a determination of residency status. ~~[reclassification referred to the committee by said administrative office or person having day to day responsibility for this administrative regulation.]~~

(5)(a) The residency review committee shall be established by the institution in a manner set forth by the institution in accordance with this section.

(b) Membership on the residency review committee shall include at least one (1) faculty and one (1) student member.

~~[(6)]~~ ~~[To evaluate student requests for reclassification.]~~ Each institution shall establish an operational policy on the determination of residency status which shall be filed with the Council on Higher Education and which shall include but not be limited to the following:

(a) ~~[including]~~ Procedures describing the steps in the initial determination of residency status;

(b) ~~[and]~~ Designated responsibilities of institutional officials;

(c) Responsibilities of persons requesting admission to the institution or who request a change in residency status;

(d) Procedures and requirements pursuant to a residency review committee review of a determination of residency status;

(e) Training of institutional officials responsible for a determination of residency status; and

(f) The role of the residency review committee.

(7) The administrative regulation on the determination of residency status for admission and tuition assessment purposes ~~[The Council on Higher Education residency classification policy]~~ shall be published in its entirety in the institution's catalog and disseminated to all students ~~[official bulletin(e) of each institution].~~

(8) A student has ~~[(2)]~~ ~~Student responsibilities.~~ The responsibility for registering under the proper residency classification which includes but is not limited to the following actions: ~~[is that of the student. It is the student's obligation to raise]~~

(a) Raising questions in a timely manner concerning residency classification;

(b) Making ~~[and make]~~ application for change of residency classification in a timely manner with the designated office or person at ~~[administrative officials of]~~ the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency. ~~[A student classified as a resident who becomes a nonresident shall be required to notify immediately the proper institutional officials.]~~

(9) If a ~~[However, if the]~~ student fails to notify institutional officials of a ~~[the]~~ change in residency ~~[status]~~, institutional officials may investigate and evaluate the current residency status of the student regardless of the source of the information.

(10) A student classified as a nonresident shall ~~[is considered to]~~ retain that status until the student ~~[makes written application for reclassification in the form prescribed by subsection (3) of this section and]~~ is officially reclassified by the proper administrative officials.

Section 5. Procedures for a Determination of Residency Status.

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(1) [(3) Request for reclassification.] Application for a review of a determination of residency status [change of residency classification] shall be made to the administrative office or person designated by the institution for this purpose pursuant to Section 4 of this administrative regulation.

(2) The [Such] application, with supporting documentation, shall be made by the student not more than thirty (30) [forty-five (45)] calendar days after the first day of classes of the academic term for which a determination of residency status [reclassification] is sought.

(3) A student may apply for a review of a determination of residency status as defined in Section 4(1) of this administrative regulation [reclassification] only once for each [during the] academic term [for which reclassification is requested].

[(a) To support full consideration of a request for a change in residency classification, each]

(4) When the Council on Higher Education has information that an institution's determination of residency status may be incorrect, it may require the institution to review the determination of residency status and report the results of that review.

(5) An application shall consist of:

(a) An affidavit authorized by the Council on Higher Education and submitted by the student or the parent of a dependent student asserting the claim for a change in an initial determination of residency status or a change in the determination of residency status and asserting that the documentation and information are accurate and true; and

(b) Information and documentation required by an institution and consistent with this administrative regulation which is necessary [a complete affidavit which includes the necessary documentation] to substantiate a request for a change in a determination of residency status. [facts cited for reclassification. Each applicant is encouraged to submit a formal statement indicating the basis for the claim of resident status. The]

(6) A student[er] shall be responsible for ensuring that all necessary documentation as required by the institution is submitted with the affidavit. Incomplete applications may be returned to the student for completion at the discretion of appropriate institutional officials. The time limit set forth in subsection (2) of this section shall begin at the date an application is received in the office designated to administer this administrative regulation.

(7)(a) [(b)] Applications [for reclassification] shall be first reviewed by the office or person designated by the institution pursuant to Section 4 of this administrative regulation.

(b) Upon a written request by a student appealing the decision of the designated office or person, the residency review committee shall review, evaluate, and act upon that appeal.

(c) [according to institutional policy. When applications for reclassification are referred to the committee.] The student shall be notified in writing of [as to] the decision of the administrative officer designated by the institution or the residency review committee as appropriate within forty-five (45) working days after receipt of a person's application for a change. [a decision on the application.]

(8) The residency review committee's written decision on residency shall include but not be limited to the following information:

(a) Findings of fact; [and]

(b) Determination of whether the applicant is deemed to be a "dependent person" or "independent person"; and

(c) Whether the applicant is a ["resident"] or ["nonresident,"] and the reasons consistent with institutional policy and [(e) based upon] this administrative regulation [for said determinations].

(9) [(f)] An application resulting [results] in a change in a determination of residency [of classification] from nonresident to resident[, such change] shall not be made retroactive beyond the academic term in which the request for a change in a determination of residency status [application for resident classification] is made.

(10) If a request for a change in a determination of residency status is denied by the institution, the student [A student denied

resident classification by the committee] shall have the right to appeal such decision to the Council on Higher Education in accordance with Sections 6, 7, and 8 of this administrative regulation.

Section 6. [5.] Procedure for Appeal to the Council on Higher Education. (1) The Executive Director of the Council on Higher Education shall designate [appoint] a person on the staff of the Council on Higher Education to serve as an appeals officer.

(2) The appeals officer shall review all residency appeals from the public institutions of higher education to determine if the residency review committee's written decision is supported by clear and convincing [substantive] evidence and is in conformity with this administrative regulation.

(3) Upon receipt of notice from the residency review committee of the decision by certified or registered mail, [(2) After] the student [receives the decision of the committee, the student] has fourteen (14) calendar days in which to appeal that decision to the Council on Higher Education by giving notice in writing to the office or person [- The student initiates this process by giving written notice to the chair of the committee or the person or office] designated by the institution to administer this administrative regulation. [handle such appeals.]

(4) An appeal shall be filed in a timely manner if it is received in the office designated by the institution in Section 4 of this administrative regulation within the time established in Section 5 of this administrative regulation.

(5) Appeals filed more than fourteen (14) calendar days after receipt of the decision of the residency review committee shall be dismissed and the decision of the residency review committee shall be final.

(6) [(3)] The office or person designated by the institution pursuant to Section 4(2) of this administrative regulation [committee or its designated representative] shall be responsible for forwarding to the Council on Higher Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Higher Education.

(7)(a) [(4)] The appeals officer shall consider [be considered on] the written record alone [and new or additional evidence shall not be considered].

(b) New information provided by the student that was not available at the time of the determination of residency status by the institution shall result in a decision by the appeals officer to remand the case back to the residency review committee for further action.

(c) A remand by the appeals officer because of information not available at the time of the determination of residency status shall require the residency review committee to reconsider the determination of residency status in light of the new information.

(d) The residency review committee shall consider the new information or evidence and shall forward a written recommendation to the appeals officer within twenty-one (21) calendar days after receipt of the notice of remand.

(e) A copy of the residency review committee recommendation shall be provided to the student.

(f) A remand is considered to be part of the appeal to the council and does not constitute a final determination by the appeal's officer.

Section 7. Determination of the Council on Higher Education Appeals Officer. (1) [(5)] The appeals officer shall review the written record including [and] the residency review committee's written decision and shall make a determination [recommendation] to affirm, modify, or reverse the residency review committee's decision.

(2) The appeals officer may order the appeal remanded to the residency review committee for further proceedings before the appeals officer renders a recommendation based on a finding that the residency review committee:

(a) Failed to consider all information and evidence submitted; or

(b) Failed to follow institutional policies and procedures.

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(3) The determination of the appeals officer shall be in writing and shall state the reason for the decision.

(4) Within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the student by certified or registered mail with a copy to the office or person designated by the institution to administer this administrative regulation. [Executive Director of the Council on Higher Education or designated representative. The Executive Director of the Council on Higher Education or designated representative shall promptly forward the recommendation of the appeals officer to the institutional representative designated to handle appeals for final disposition by the institution in accordance with established institutional procedures.]

(6) The institutional representative shall promptly forward the recommendation of the appeals officer to the student. Each party (the institution and the student)

(5) The student shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file a written appeal with [exceptions to the report with] the Council on Higher Education requesting a formal adjudicatory hearing. [institutional representative designated to handle final disposition of appeals. The institution shall make final disposition of the appeal and notify the student within thirty (30) calendar days after expiration of the ten (10) day period for filing exceptions.]

Section 8. Hearing on Exceptions Filed by Student. (1) An administrative hearing on a request for a change in a determination shall be held in accordance with the provisions of the administrative regulation on administrative hearings consistent with the provisions of KRS Chapter 13B and as set forth in the administrative regulation on administrative hearings, 13 KAR 2:070.

(2) The administrative regulation shall set forth the procedures for the conduct of the appeal including deadlines and timetables.

(3) The recommendation of the hearing officer shall be received by the Executive Director of the Council on Higher Education who shall issue a final decision on the appeal:

(a) The decision of the executive director shall be in writing and shall set forth the basis on which the decision is based.

(b) The decision of the executive director shall be provided to the student within fourteen (14) after receipt of the hearing officer's decision.

(c) The executive director shall notify the institution of the final decision at the time the student is notified.

(4) Upon receipt of the notification of the final decision of the executive director, the student shall have the right to appeal the decision to the appropriate court of law consistent with the procedures and rights contained in 13 KAR 2:070.

Section 9. The Council on Higher Education, upon receipt of a bill for the conduct of an administrative hearing on an appeal of a determination of residency status, shall assign one-half (1/2) of the cost of the administrative hearing to the institution from which the appeal is taken. The institution shall provide payment to the Council on Higher Education or to the office or administrative entity so designated by the council within thirty (30) days of receipt of the notice of payment.

Section 10. New Administrative Regulation Supersedes Previous Administrative Regulation. [6-] This administrative regulation supersedes all previous policies and administrative regulations of the council relating to a determination of residency status [classification] of students for tuition assessment purposes.

JAMES M. MILLER, Chair

APPROVED BY AGENCY: January 22, 1996

FILED WITH LRC: February 9, 1996 at noon

PUBLIC HEARING: A public hearing on administrative regulation

13 KAR 2:045, Determination of residency status for admission and tuition assessment purposes, will be held on March 29, 1996, at 10 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Higher Education in writing by Wednesday, March 22, 1996. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed amendment to the administrative regulation to: Mr. Kenneth Walker, Deputy Executive Director for Finance, Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth Walker

(1) The regulation, 13 KAR 2:045, Determination of Residency Status for Admission and Tuition Assessment Purposes, will be implemented statewide. The regulation establishes processes and procedures by which individuals and public higher education institutions may determine the residency status of individuals. Admission standards for nonresidents of Kentucky may be different from those required of Kentucky residents. Tuition is assessed to nonresidents of Kentucky at different rates than those assessed to Kentucky residents. The Council on Higher Education receives appeals from approximately 40 students annually.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented is negligible. Implementation is statewide; no direct or indirect cost or savings will result. There is no impact on employment.

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented is minimal - implementation will occur throughout the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year: Institutions have mechanisms in place for the review of residency appeals. The modification of this regulation will result in additional costs associated with the implementation of the Administrative Hearings Act. Costs have not been determined since rates are set by the Office of the Attorney General and those rates are not yet published.

2. Second and subsequent years: The same as point 1.

(3) Effects on the promulgating administrative body:

1. The agency is not budgeted to accommodate the costs associated with the new procedures under the Administrative Hearings Act. It is proposed that one-half of the cost of the hearing be paid by the institution where the student is enrolled.

2. Costs should decrease as the institutions and the agency communicate appeals decisions effectively.

(4) No impact on state or local revenue is anticipated.

(5) The source of revenue for the administration of this regulation is state funds.

(6) Economic impact on Kentucky is minimal.

(7) Administrative Hearings Act requires extension of a due process hearing to individuals appealing residency decisions. No alternative approaches were considered.

(8) The expected benefits from the proposed amendment to an existing regulation follow:

(a) Impact on public health and environmental welfare is not applicable.

(b) Same as (a).

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(c) Same as (a).

(9) The proposed amendment to an existing state administrative regulation does not conflict with any existing law or regulation. The amendment's primary purpose is to harmonize the appeals process with the requirements of the new Administrative Hearings Act.

(10) No additional comments are offered.

(11) Tiering is not being applied.

GENERAL GOVERNMENT CABINET State Board of Elections (Amendment)

31 KAR 4:070. Recanvass procedures.

RELATES TO: KRS 117.305, 118.425

STATUTORY AUTHORITY: KRS 117.015(1), 117.305(2), (3),
118.425(3)

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to set reporting standards for those elections where a recanvass is requested and received in a timely manner.

Section 1. (1) The ~~Official~~ Recanvass of ~~Official~~ Count and Record of Election Totals form, SBE 49A, ~~7/94 [July, 1994]~~, which is incorporated by reference, shall be used by the county board of elections to report all recanvassed votes. This form, SBE 49A, may be obtained from the State Board of Elections, 140 Walnut Street, [Room 71, The Capitol,] Frankfort, Kentucky 40601, which is open Monday through Friday, 8 a.m. to 4:30 p.m.

(2) The county board of elections shall state the county making the report, the date of the report, the date of the election, the office for which the recanvass is being made, the names of each candidate in the office being recanvassed, and the machine votes, absentee votes and total votes for each candidate. The report shall be signed by each member of the county board of elections.

Section 2. (1) The county board of elections shall file its recanvass report, SBE 49A, on the Thursday before the third Monday after the election for those vote totals reported to the Secretary of State.

(2) The county board of elections shall file its recanvass report, SBE 49A, on the Thursday before the third Monday after the election for the vote totals reported to the county clerk.

(3) The original of the recanvass report, SBE 49A, shall be filed with the Secretary of State when the candidate was voted for as specified by KRS 118.425(3) and shall be filed with the county clerk when the candidate was voted for as specified by KRS 118.425(2).

(4) The county board of elections shall file the yellow copy of the recanvass report, SBE 49A, of vote totals reported to the Secretary of State and the county clerk with the county clerk.

Section 3. (1) In a general election the county board of elections shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(2) In a partisan primary election the county board of elections shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate of the same political party seeking the same office.

(3) In a nonpartisan election the county board of elections shall check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

JOHN Y. BROWN, III, Chairman

APPROVED BY AGENCY: February 15, 1996

FILED WITH LRC: February 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 29, 1996 at 9 a.m., in the conference room of the State Board of Elections, 140 Walnut Street,

Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 the contact person.

CONTACT PERSON: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-7100.

REGULATORY IMPACT ANALYSIS

Contact person: George Russell, Executive Director

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

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

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

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

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

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

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

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic effect on the Commonwealth of Kentucky.

(b) Kentucky:

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 120 county boards which are charged with administering the election laws within their counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to county boards of elections administering the election laws.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no effect on the expenditures and revenues of a local government.

PERSONNEL CABINET (Amendment)

101 KAR 2:036. Compensation plan and pay incentive systems.

RELATES TO: KRS 18A.030, 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This administrative regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. (1) Initial appointment shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes a higher rate due to recruitment difficulties or the appointment of a highly qualified applicant at a rate above the minimum.

(2) An appointing authority may, due to difficulty in recruiting a specifically qualified applicant or applicants, request the appointment of an applicant at a salary not to exceed the midpoint provided all other agency employees with the similar qualifications in the same job class and work county shall have their salaries adjusted by the

appointing authority to that rate.

(3) An appointing authority may also request that a highly qualified applicant be given increased credit for relevant education and experience that is beyond the minimum requirements established for the job classification. The maximum allowable rate shall be five (5) percent for each year the applicant's education and experience exceeds the minimum requirements but the maximum number of years for which credit may be allowed shall not exceed four (4) years of relevant education or experience in excess of the minimum requirements. If approved by the commissioner, the appointing authority shall raise the salaries of all agency employees in the same job classification and work county to the same rate if they possess qualifications similar to those of the applicant.

Section 2. Reentrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place reemployed, reinstated, or former employee probationally appointed at a salary:

(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;

(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;

(c) In accordance with the standards used for making new appointments; or

(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade.

(3) Former employees reemployed, reinstated or probationally appointed to a salary:

(a) Below the midpoint of the pay grade shall be considered for a probationary increment at the time of completion of the probationary period;

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of reemployment, reinstatement or appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of not less than five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

(2) Demotion. An employee who is demoted may have his salary changed to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

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(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070, Section 2, may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary changed to the rate received at the time he left the classified service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(c) If an employee's salary is adjusted as the result of participation in a pilot program authorized by KRS 18A.400 through 18A.445, that salary shall not be reduced as long as he is employed by the agency, except as authorized by an action for demotion or reversion.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 7 of this administrative regulation may receive a salary increase as outlined below except that after the salary increase the employee's salary shall not be below the minimum of the new pay grade:

(a) Five (5) percent uniformly applied within the agency;

(b) Ten (10) percent uniformly applied within the agency;

(c) A dollar amount determined by the Commissioner of Personnel uniformly applied in the class within the same agency.

(8) Other salary adjustments.

(a) An appointing authority, with the approval of the commissioner, may grant a salary adjustment to an employee who was eligible for but did not receive at least a five (5) percent salary advancement due to reallocation to a higher grade, implementation of a special entrance rate, class grade changes, effective on or after January 3, 1986 or completion of a promotional probationary period. In no case may the salary adjustment be more than five (5) percent nor be made retroactive to the original effective date but shall be made effective on the first of the month following approval of the commissioner.

(b) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 7(3) of this administrative regulation.

Section 4. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted an increment at the beginning of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation. The service may be provisional or probationary.

(2) Annual increment dates shall be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or reemployment, pursuant to Section 2(3) of this administrative regulation.

(b) When an employee returns from leave without pay pursuant

to subsection (4) of this section.

(3) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

(4) Return from leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

(5) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part time to full time, part-time service shall be counted in determining increment eligibility for a full-time employee. In those cases where an employee is changed from full time to part time, full-time service shall be counted in determining increment eligibility for a part-time employee.

Section 5. Educational Achievement Award. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent employee, with status may receive one (1) lump sum educational achievement award per fiscal year:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after a merit employee initially gained permanent status in state government. Employees shall not receive credit for courses taken while on educational leave, for hours paid for by the agency through tuition assistance, or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the GED test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the GED test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than \$2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the GED test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) An employee who has successfully completed the Kentucky Certified Public Manager Program offered by Governmental Services Center at Kentucky State University shall receive one (1) lump sum educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500.

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(4) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent together with official transcripts or grade reports for the courses completed) to the appointing authority or his designee. In compliance with the standards set forth in this administrative regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A lump sum educational achievement award shall not be added to the employee's base salary or wages.

Section 6. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. Such increase shall be determined by the commissioner by pay grade, and shall be uniform for all eligible employees within each pay grade.

Section 7. Class Reevaluation and Grade Adjustment. (1) Class reevaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in subsection (1) of this section, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 3(7) of this administrative regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 8. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act 29 USC §201, et seq. and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 9. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 10. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which

employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification in the agency for which the shift premium was approved. An employee shall not receive a supplemental shift premium subsequent to shift reassignment or to a transfer, promotion or demotion to a position that is ineligible for a shift differential premium payment.

Section 11. Distinguished Service Award. (1) Appointing authorities may utilize up to fifty (50) percent of funds saved through a combination of high performance levels and staff reduction to grant distinguished service awards to employees. No more than twenty-five (25) percent of the employees in an agency shall be eligible for a distinguished service award in a fiscal year. Distinguished service awards shall also be contingent upon the availability of surplus funds within the appointing authority's budget and shall be within the sole discretion of the appointing authority. A distinguished service award shall equal three (3) percent of the midpoint of the grade level of the employee and shall be added to the employee's base salary, if that salary is below the midpoint, or paid in a lump sum if the employee's salary exceeds the midpoint.

(2) An employee may be eligible for a distinguished service award if:

- (a) The employee has at least forty-eight (48) months service, twenty-four (24) of which must be current; and
 - (b) Has demonstrated a sustained level of exceptional job performance; or
 - (c) Has assumed a significant level of additional job responsibilities or duties and performed them in an acceptable manner; or
 - (d) The appointing authority feels that the employee's acts or ideas have resulted in a significant financial savings or improvement in services to the Commonwealth and its citizens.
- (3) An employee shall be eligible for only one (1) distinguished service award in a twenty-four (24) month period.
- (4) In order to grant a distinguished service award the appointing authority shall submit the personnel action form and written justification. The award shall not be granted until the request is approved by the Commissioner of Personnel.

ROBERT S. PETERS, Secretary

PAUL E. PATTON, Governor

APPROVED BY AGENCY: February 12, 1996

FILED WITH LRC: February 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, March 28, 1996, at 10 a.m. at 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Personnel Cabinet in writing by Saturday, March 23, 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. 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: Daniel F. Egbers, Managing Attorney, Office of the Secretary, Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Daniel F. Egbers

(1) Type and number of entities affected: All classified employees in the Executive Branch of state government are eligible for the salary adjustment provided for by this amendment.

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

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

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

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings: No direct or indirect costs or savings are anticipated.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None except routine approval of agency actions.

(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: Salary adjustments will be provided from current agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

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

(8) Assessment of expected benefits: The amendment will provide incentives to employees to improve skills by completing the Kentucky Certified Public Manager Program.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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: 101 KAR 3:045 is being amended to provide for a parallel adjustment for unclassified employees.

(a) Necessity of proposed regulation 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:

(11) TIERING? Is tiering applied? Yes. This regulation governs the classified service. 101 KAR 3:045 is being amended to provide parallel changes for the unclassified service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CER Par 825).

2. State compliance standards. The purpose of this amendment

is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

PERSONNEL CABINET (Amendment)

101 KAR 3:045. Unclassified service; classification and compensation incentive systems.

RELATES TO: KRS 18A.155

STATUTORY AUTHORITY: KRS 18A.155(1)(b)

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v).

Section 1. Classification Plan. The principles and provisions of 101 KAR 2:020 shall apply to positions in the unclassified service.

Section 2. Compensation Plan. (1) With the exception of the provisions of Section 3 of this administrative regulation relating to

probationary increments, the principles and provisions of 101 KAR 2:036 shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Inasmuch as the appointing authority has the option of not providing salary increases under this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

(c) An appointing authority, with the approval of the commissioner, may grant a salary adjustment, equivalent to the budgeted annual increment for classified employees, to seasonal, temporary, FFTL and other unclassified employees who have completed twelve (12) months total full-time employment in the classified or unclassified service without a salary increase. The salary adjustment, if granted, shall be effective on the first day of the month following approval of the increase.

(2) Physicians, employed as such and pursuant to KRS 64.655, shall be exempt from the provisions of 101 KAR 2:036, Section 1, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

Section 3. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner:

(1) An employee may receive one (1) lump sum educational achievement award per fiscal year for satisfactorily completing outside of work hours, 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses must have been completed after an employee initially served six (6) months in state government. Employees shall not receive credit for hours taken while on educational leave, for hours paid for by the agency through tuition assistance, or for hours which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) An employee may receive one (1) lump sum educational achievement award for earning an approved diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved high school diploma, certificate, or passing score shall have been obtained by the state employee on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than \$2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) An employee who has successfully completed the Kentucky Certified Public Manager Program offered by Governmental Services Center at Kentucky State University shall receive one (1) lump sum educational achievement award. The lump sum educational achieve-

ment award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500.

(4) To apply for an educational achievement award an employee shall submit supporting documentation to the appointing authority or his designee on a DPT Form 10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent) together with official transcripts or grade reports for the courses completed. As provided by this section, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval.

ROBERT S. PETERS, Secretary

PAUL E. PATTON, Governor

APPROVED BY AGENCY: February 12, 1996

FILED WITH LRC: February 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, March 28, 1996, at 10 a.m. at 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Personnel Cabinet in writing by Saturday, March 23, 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. 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: Daniel F. Egbers, Managing Attorney, Office of the Secretary, Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Daniel F. Egbers

(1) Type and number of entities affected: All unclassified employees in the Executive Branch of state government are eligible for the salary adjustment provided for by this amendment.

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

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

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

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings: No direct or indirect costs or savings are anticipated.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None except routine approval of agency actions.

(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: Salary adjustments will be provided from current 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:

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- (a) Geographical area in which administrative regulation will be implemented: None
- (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternative was available.
- (8) Assessment of expected benefits: The amendment will provide incentives to employees to improve skills by completing the Kentucky Certified Public Manager Program.
- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
- (b) State whether a detrimental effect on environment and public health would result if not implemented: 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: 101 KAR 2:036 is being amended to provide for a parallel adjustment for classified employees.
- (a) Necessity of proposed regulation 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:
- (11) TIERING? Is tiering applied? Yes. This regulation governs the unclassified service. 101 KAR 2:036 is being amended to provide parallel changes for the classified service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CER Par 825).
2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.
3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:
- (a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
- (b) Providing equitable and adequate compensation.
- (c) Training employees, as needed, to assure quality performance.
- (d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
- (e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

GENERAL GOVERNMENT CABINET State Board of Examiners and Registration of Architects (Amendment)

201 KAR 19:035. Qualifications for examination.

RELATES TO: KRS 323.050, 323.060
STATUTORY AUTHORITY: KRS 323.210

NECESSITY AND FUNCTION: To further define eligibility of applicants for admission to the examinations.

Section 1. Eligibility to Take the State Board Examination. Any person who possesses the qualifications prescribed in KRS 323.050, and as further defined in other sections of these administrative regulations, shall be eligible to take the examinations.

Section 2. General Requirements. Applicants for examination must meet the following requirements:

- (1) Be a legal resident of the Commonwealth of Kentucky unless specifically exempted by the board therefrom for a justifiable reason.
- (2) Be of good moral character, as verified by employers and registered architects. One (1) or more of the following may be sufficient to prevent an applicant from being considered to be of "good moral character:"
- (a) Conviction of a felony.
- (b) Chronic alcoholism, persistent drug abuse, or any such acts of behavior which would, if applicant were licensed, jeopardize or impair his judgment to meet professional responsibility as an architect to the public welfare and safety.
- (c) Submitting a misstatement or misrepresentation of facts in an application or in supplementary information.
- (d) Violating any provision of KRS Chapter 323 or board administrative regulations either before or after admission to examination.
- (e) Violating the registration law of any other state, territory, or country.
- (3) To be eligible for examination an applicant must present authentic evidence, by means of college transcripts and verification from employers, architects and others that he has met all the requirements noted in other sections and has had well diversified and satisfactory training in the many areas of architectural practice. The documentation shall be as verified, compiled and transmitted in bound record form by the National Council of Architectural Registration Boards (NCARB).
- (4) The applicant may, at the board's discretion, be asked to appear for a personal audience so that the board may have the opportunity to judge his general qualifications for admission to the

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examinations.

(5) The applicant must demonstrate to the board that his qualifications and preparation for examination are adequate.

Section 3. Education Requirements. (1) An applicant who has met the requirements of Section 2 of this administrative regulation shall in addition:

(a) Hold a first professional degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board (NAAB) not later than two (2) years after termination of enrollment; or

(b) Have satisfied the education standards as specified in the National Council of Architectural Registration Boards (NCARB) "Circular of Information No. 3", 1995-1996 [~~1993-1994~~] edition, by earning five (5) years of equivalent education credits by the experience and education definitions of Table A and the footnotes thereto. The minimum five (5) years equivalent education credits shall be accumulated prior to June 1, 1992.

Section 4. Training Requirements. (1) An applicant who has met the requirements of Section 2 of this administrative regulation shall, in addition have satisfied the Intern Development Program (IDP) training requirements in accordance with Appendix B and pertinent references of the National Council of Architectural Registration Boards (NCARB) "Circular of Information No. 1", 1995-1996 [~~1993-1994~~] edition, as verified by NCARB evaluation.

Section 5. Incorporation by Reference; National Council of Architectural Registration Boards (NCARB) Circular of Information No. 1, 1995-1996 [~~1993-1994~~] Edition and Circular of Information No. 3, 1995-1996 [~~1993-1994~~] Edition. A copy of these circulars may be obtained at the board office, 841 Corporate Drive, Suite 200B, 2302 Brookhill Circle, Lexington, Kentucky 40503 [~~40502~~]. Office hours are 9 a.m. to 5 p.m.

JERRY W. HERNDON, President

APPROVED BY AGENCY: January 12, 1996

FILED WITH LRC: February 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 21, 1996 at 1:30 p.m. at 841 Corporate Drive, Suite 200B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 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: L. Wayne Tune, Executive Director, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, (606) 246-2069.

REGULATORY IMPACT ANALYSIS

Contact person: L. Wayne Tune

(1) Type and number of entities affected: Approximately 30 new applicants per year.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: None

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: No effect.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This regulation amended to be current dates of publications referenced and include new address of office.

(11) TIERING: Is tiering applied? No. One class of applicant qualifies and applies.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:040. Standards of practice administrative regulation.

RELATES TO: KRS 324A.035, 324A.050(10)

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. [This administrative regulation is necessary to comply with] Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, requires that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. [(12 USC 3331 through 12 USC 3351), KRS Chapter 324A to insure that appraisers follow standards, and to protect the public.] The function of this administrative regulation is to establish the standards of professional practice.

Section 1. A licensed nonfederal real property appraiser shall be exempted from the provisions of KRS 324A.050(10), requiring

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compliance with the "Standards of Professional Appraisal Practice."

Section 2. A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a trainee real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice."

Section 3. An appraisal report that is made with regard to a federally related transaction shall be in writing.

~~Section 4. [If an applicant, certificant, or licensee fails to comply with the reporting or documentation requirements established in administrative regulations promulgated by the board, his certificate or license shall be denied or suspended by the board. 201 KAR 30:070, Section 10, provides for the administrative process dealing with denial and suspension by the board.]~~

~~Section 5.]~~ (1) "Uniform Standards of Professional Appraisal Practice (1996 [4996] edition)," Appraisal Standards Board of the Appraisal Foundation, is incorporated by reference, as the standards of professional appraisal practice established by the board pursuant to KRS 324A.035.

(2) It may be inspected at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511-8410, telephone: (606) 246-2017, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) It may be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, telephone: (202) 347-7722.

JED DETERS, Chairman

APPROVED BY AGENCY: January 26, 1996

FILED WITH LRC: January 29, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 22nd day of March, 1996, at 10 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511-8410. Individuals interested in attending this hearing shall notify this agency in writing by the 17th day of March, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511-8410, Telephone: (606) 246-2017.

REGULATORY IMPACT ANALYSIS

Agency Contact: James P. Daniels

(1) Type and number of entities affected: Approximately 1200 licensed or certified appraisers in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs

or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was amended to update the standards of practice for licensed and certified appraisers. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

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

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

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife (Amendment)

301 KAR 2:049. Seasons for furbearers and small game on specified areas.

RELATES TO: KRS 150.010, 150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.360, 150.365, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175

NECESSITY AND FUNCTION: To specify exceptions on wildlife

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management areas to statewide small game and furbearer hunting regulations. This amendment is necessary to open the spring squirrel season at Land Between the Lakes. [~~adjust dates and other requirements on wildlife management areas, to establish standardized dog training and squirrel seasons on wildlife management areas, to remove federal areas from this administrative regulation and to comply with the formatting and language requirements of KRS Chapter 13A.~~]

Section 1. All provisions of 301 KAR 2:251 shall apply unless specified otherwise by this administrative regulation.

Section 2. On wildlife management areas owned or managed by the department:

(1) During periods when firearms are allowed for deer hunting, persons shall wear hunter orange garments of a solid unbroken pattern as outer coverings on at least the head, chest and back.

(a) Mesh weave openings in the hunter orange garment shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter orange color of the garment.

(b) Camouflage pattern hunter orange garments worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

(c) Waterfowl hunters shall be exempt from the hunter orange requirements.

(2) During dates when deer hunting with breech-loading firearms is allowed, persons shall not:

(a) Hunt small game or furbearers;

(b) Trap; or

(c) Allow unleashed dogs.

(3) Persons may hunt small game during the modern gun deer season on wildlife management areas where gun deer hunting is not permitted during the modern gun deer season.

(4) Unless specified otherwise in Section 3 of this administrative regulation, persons shall not allow their dogs to be unleashed from March 1 until the third Saturday in August, except:

(a) Persons participating in department-authorized field trials may use unleashed dogs.

(b) Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.

(5) Persons may hunt squirrels from June 1 through June 14. This season shall be open on Land Between the Lakes.

(6) Persons shall not hunt on portions of wildlife management areas designated by signs as closed to hunting.

(7) Persons shall not enter portions of wildlife management areas designated by signs as closed to public access.

Section 3. Exceptions on Specific Wildlife Management Areas. (1) Barren River Wildlife Management Area. Quail and rabbit: closed after December 31.

(2) Beaver Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. Trappers shall complete a harvest survey form obtained from the area manager.

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(4) Cane Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. Trappers shall complete a harvest survey form obtained from the area manager.

(5) Central Kentucky Wildlife Management Area.

(a) This area shall be closed to small game and furbearer hunting except squirrels.

(b) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:

1. Persons participating in department-authorized field trials may use unleashed dogs.

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.

(c) At other times of the year, unleashed dogs are permitted only on Tuesdays, Thursdays, Saturdays, Sundays, or during permitted field trials.

(d) Trappers shall obtain prior written permission from the area manager.

(e) Hunters and dog trainers shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(c) Hunters and dog trainers shall check in and out daily at the designated check station.

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area.

(a) Quail and rabbit: closed after December 31.

(b) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:

1. Persons participating in department-authorized field trials may use unleashed dogs.

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.

(c) Hunters and dog trainers shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area. Closed to hunting and trapping for small game and furbearers.

(9) Dewey Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(10) Fishtrap Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(11) Fleming Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(12) Grayson Lake Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(c) Hunters and dog trainers shall check in and out daily at a designated check station.

(13) Green River Lake Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: closed to hunting and trapping.

(c) Hunters and dog trainers shall check in and out daily at a designated check station.

(14) Higginson-Henry Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Hunters and dog trainers shall check in and out daily at the designated check station.

(15) Kleber Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Hunters and dog trainers shall check in and out daily at the designated check station.

(16) Lake Cumberland Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(17) Mill Creek Wildlife Management Area, including private inholdings.

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- (a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearer: December 5 through December 31. Trappers shall complete a harvest survey.
- (18) Nolin Reservoir Wildlife Management Area. Quail and rabbit: closed after December 31.
- (19) Paintsville Lake Wildlife Management Area.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearers: closed after December 31.
- (20) Peal Wildlife Management Area.
(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.
(b) Furbearer trapping: December 1 through 10, water sets only. Trappers shall be selected by drawing conducted by the area manager.
(c) Quail and rabbit: closed after December 31.
- (21) Pennyryle Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).
- (22) Pioneer Weapons Wildlife Management Area.
(a) Hunters shall not use breech-loading firearms.
(b) Persons except authorized personnel shall not carry breech-loading firearms with ammunition in the chamber or magazine.
(c) Persons shall not hunt small game with shot larger than number two (#2).
- (23) Redbird Wildlife Management Area.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearers: closed after December 31.
- (24) Robinson Forest Wildlife Management Area. Hunting is permitted under the requirements of 301 KAR 4:200.
- (25) Taylorsville Lake Wildlife Management Area.
(a) The area east of Van Buren Boat Ramp is closed to public access the day after the deer quota hunt through March 15.
(b) Quail and rabbit: closed after December 31.
(c) Hunters and dog trainers shall check in and out daily at a designated check station.
- (26) Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).
- (27) West Kentucky Wildlife Management Area, McCracken County.
(a) Persons shall not hunt on tracts designated by numbers followed by the letter "A".
(b) Quail and rabbit:
1. On Tracts 2, 3, 6 and 7: closed after December 31.
2. On Tracts 1, 4 and 5: January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data. Signs announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.
(c) Hunters and dog trainers shall check in and out daily at the designated check station.
(d) Small game or furbearer hunters shall not use rifles or ball or slug ammunition.
(e) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:
1. Persons participating in department-authorized field trials may use unleashed dogs.
2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.
(f) Vehicular traffic on Tract 6 is prohibited February 1 through April 16.
- (28) Westvaco Public Hunting Areas. Persons hunting on Westvaco Public Hunting Areas shall possess a valid Westvaco Hunting Permit.
- (29) White City Wildlife Management Area. Quail and rabbit: closed after December 31.
- (30) Yatesville Wildlife Management Area. Hunters and dog trainers shall check in and out daily at a designated check station.
- (31) Yellowbank Wildlife Management Area.
(a) Quail and rabbit: closed after December 31.
(b) Hunters and dog trainers shall check in and out daily at the designated check station.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary

APPROVED BY AGENCY: December 1, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Roy Grimes

(1) Type and number of entities affected: Approximately 60,000 small game and furbearer hunters utilize the wildlife management areas covered by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation, which continues long-standing hunting and trapping seasons, will have no 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 impact on the cost of doing business.

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

1. First year following implementation: This administrative regulation imposes no new paperwork or reporting requirements. Some wildlife management areas required hunters to check in and check out.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation imposes no new direct or indirect costs.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact state and local revenues.

(5) Source of revenue to be used for implementation and

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enforcement of administrative regulation: Fish and Game Fund.

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

(a) Geographical area in which administrative regulation will be implemented: Hunting on, and other recreational uses of, wildlife management areas create positive economic impacts upon local economies in the vicinity of these areas. Each small game hunter spends approximately \$200 annually for equipment, transportation, food and lodging.

(b) Kentucky: Same as for local areas.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is applying statewide hunting seasons to wildlife management areas. This alternative was rejected because these areas, because of high public use, require different seasons or other 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: Wildlife management areas represent environmentally valuable natural areas. This regulation allows public recreation on these areas while affording them needed protection from overuse.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without special regulations, wildlife management areas could lose valuable wildlife populations or other natural features.

(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 in setting different seasons dates for various wildlife management areas, taking into account both biological concerns and hunter preference. Specific season dates or other requirements for wildlife areas allow public recreation while at the same time helping protect the flora and fauna of these areas.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990, 59 CFR 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.330, 150.340, 150.600, 150.603, 59 CFR 20

NECESSITY AND FUNCTION: To set waterfowl season dates and limits within federal waterfowl hunting frameworks. This amendment is necessary to adjust season dates, limits, and open or closed areas for the 1995-96 waterfowl season.

Section 1. Zone Descriptions. Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 2. Gun and Archery Season Dates and Bag Limits for Ducks, Coots and Mergansers. (1) Season dates.

(a) Statewide, November 23 [24] through November 26 [27].

(b) Eastern Duck Zone: December 7 [16] through January 21 [20].

(c) Western Duck Zone: December 2 [10] through January 16 [14].

(2) Gun and archery daily limits.

(a) Five (5) [Three (3)] ducks, which shall include no more than:

1. Four (4) [Two (2)] mallards, which shall include no more than one (1) hen mallard.

2. Two (2) wood ducks.

3. One (1) black duck.

4. One (1) redhead.

5. One (1) pintail.

6. One (1) canvasback.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall include no more than one (1) hooded merganser.

(d) Possession limits are double daily limits.

Section 3. Gun and Archery Seasons Dates and Bag Limits for Geese. (1)(a) Snow goose, white-fronted goose and brant season dates: statewide, November 23 [24] through January 31.

(b) In the portion of Fulton County in the Western Goose Zone, hunters may take snow geese until the end of the Canada goose season or January 31, whichever occurs later.

(2) Canada goose [and white-fronted geese] season dates.

(a) Eastern Goose Zone: December 13 through January 31.

(b) Pennyroyal/Coalfield Goose Zone: December 13 [17] through January 16 [20].

(c) Western Goose Zone: November 23 through November 26 and December 2 [10] through January 31, or until quotas described in Section 7 [6] of this administrative regulation are reached.

(d) The portion of Fulton County in the Western Goose Zone: November 23 through November 26 and December 2 through February 15 [December 10 through February 13], or until quotas described in Section 7 [6] of this administrative regulation are reached.

(e) West-Central and Northeast [Cave Run] Special Hunt zones [Regions]: January 6 through January 16 [December 17 through December 23].

(3) The following are closed to goose hunting:

(a) Breathitt, [Clay, Laurel] Knott, and Perry [and Whitley] counties.

(b) The portions of Bell, Clay, Laurel, Pulaski and Whitley Counties owned by the U.S. Forest Service, including Laurel River Lake. [Bell County south of Highway 110 and east of US 26E.]

(c) McCreary County east of US 27.

(d) [Pulaski County east of US 27.

(e) Cave Run Lake and the lands inside a boundary formed by Highways 801, 1274, 36, 211 and US 60.

(4) Christian County north of Highway 68/80 is closed to Canada goose hunting.

(5) Daily limits.

(a) Except in the Northeast [Cave Run] Special Hunt Zone, ten [10] [Region, seven (7)] geese, which shall include no more than:

1. Two (2) Canada geese.

2. Two (2) white-fronted geese.

3. Two (2) brant.

(b) In the Northeast [Cave Run] Special Hunt Zone, two (2) [Region, one (1)] Canada geese [geese]. Persons shall not take snow geese, brant or white-fronted geese.

(6) Possession limits are double daily limits.

Section 4. Shooting Hours. (1) Except as specified in this administrative regulation or on wildlife management areas as stipulated in 301 KAR 2:222, one-half (1/2) hour before sunrise until sunset.

(2) In the Northeast [Cave Run] Special Hunt Zone [Area], one-half (1/2) hour before sunrise until 2 p.m.

Section 5. Ballard Wildlife Management Area North of Terrell Landing Road. (1) Ducks, coots and mergansers, December 12 [13] through January 16 [14] or until the Ballard Reporting Area goose

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quota is reached.

(2) Geese, December 12 [~~13~~] through January 27 [~~31~~] or until the Ballard Reporting Area quota is reached.

(3) No hunting on Sundays, Mondays, Christmas Day or New Year's Day.

(4) Shooting hours: one-half (1/2) hour before sunrise until noon.

(5) Waterfowl hunters:

(a) Shall apply in advance as stipulated in 301 KAR 2:222.

(b) Shall not have more than ten (10) shotgun shells in their possession.

(c) Shall case their guns while using department-supplied transportation to and from blinds.

(d) Shall be accompanied by an adult if under eighteen (18) years old.

(6) More than four (4) [~~three~~ (3)] person shall not occupy a blind.

(7) Persons shall not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area [~~is closed to waterfowl hunting~~] from October 15 through March 15.

Section 6. Falconry Waterfowl Season and Limits. (1) Season: statewide, November 5 through January 31.

(2) Daily limit: three (3) waterfowl.

(3) Possession limit: six (6) waterfowl.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 22,425 [~~14,300~~] Canada geese in the Ballard Reporting Area before January 31:

(a) Goose season shall close in the Ballard Reporting Area.

(b) In the counties associated with the Ballard Reporting Area, the goose season shall close:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(2) If hunters reach a quota of 6,555 [~~4,200~~] Canada geese in the Henderson-Union Reporting Area before January 31:

(a) Goose season shall close in the Henderson-Union Reporting Area.

(b) In the counties associated with the Henderson-Union Reporting Area, goose season shall close:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(3) The department shall provide at least a twenty-four (24) hour notice of the time and date of early closures.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Roy Grimes

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(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

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administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 60, No 189, Friday, September 29, 1995.

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

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1, 1995 and January 21, 1996. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1995 and March 1, 1996, and season framework for white-fronted geese is between the Saturday nearest October 1, 1995 through January 31, 1996.

The Canada goose season in the Western Goose Zone season may extend for 65 days (80 days in Fulton County) between October 1, 1995 and January 31, 1996 (except February 15, 1996 in Fulton County), or until the harvest of 34,500 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall be 10 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1995 and March 10, 1996 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 35 days or 30 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting

periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates were adjusted to optimizing public use within sound waterfowl conservation practices.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:222. Waterfowl hunting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 59 CFR 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.330, 150.340, 150.600, 150.603, 59 CFR 20

NECESSITY AND FUNCTION: To establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. This amendment is necessary to specify hunting requirements for Swan Lake Wildlife Management Area and application procedures for certain wildlife management areas. [~~This administrative regulation contains a portion of the substance of 301 KAR 2:220, which it repeals. Substantive changes from 301 KAR 2:220 are: allowing first come, first served hunting in blinds in the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area if permit holders do not occupy blinds by the beginning of shooting hours, permitting waterfowl hunting seven (7) days a week (instead of four (4)) on the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area and permitting waterfowl hunting on the Beaver Creek Wildlife Management Area.]~~

Section 1. Definitions. (1) "Blind" means:

- (a) A concealing enclosure.
- (b) A pit.
- (c) A boat.

(2) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(3) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(4) "Waterfowl" means ducks, geese, coots and mergansers.

Section 2. Waterfowl hunters shall not use or carry:

(1) Shotgun shells containing:

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

(2) Shot larger than size "T."

(3) Shotshells longer than three and one-half (3-1/2) inches.

Section 3. Requirements for Waterfowl Hunters in the Ballard Reporting Area, as Described in 301 KAR 2:224. (1) Waterfowl hunters:

(a) Shall hunt from blinds unless hunting in flooded, standing timber.

(b) Shall not hunt from or establish a blind:

- 1. Within 100 yards of another blind; or
- 2. Within fifty (50) yards of a property line.
- (c) Shall not possess more than one (1) shotgun while in a blind.
- (2) More than five (5) persons shall not occupy a blind.

Section 4. Blind Restrictions on Wildlife Management Areas. (1) Except as specified in this section or in Section 5 of this administrative regulation, on wildlife management areas:

- (a) Waterfowl hunters shall not establish or hunt from:
 - 1. Permanent blinds.
 - 2. Blinds within 200 yards of:

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- a. Another blind; or
- b. A waterfowl refuge.
- (b) Persons shall not hunt in designated recreation areas or access points.
- (c) More than four (4) persons shall not occupy a blind.
- (d) Hunters shall remove decoys and personal effects from the wildlife management area daily.
- (2) Persons wishing to establish permanent blinds on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake and Taylorsville Lake Wildlife Management Areas:
 - (a) Shall first obtain a permit from the U. S. Army Corps of Engineers.
 - (b) May designate one (1) other person as a partner.
 - (c) Shall participate in a drawing for blind permits on the Barkley, Barren, Green, Paintsville, and Taylorsville areas.
 - (d) Shall present a valid hunting license at the time of the drawing.
 - (e) Shall not hold more than one (1) permit per area.
- (3) Holders of blind permits:
 - (a) Shall construct blinds before November 20 or forfeit the permit.
 - (b) Shall not lock blinds.
 - (c) Unless an extension of time is granted, shall remove blinds within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.
 - (4) Blinds not occupied by the permit holder one-half (1/2) hour before sunrise shall be available to other hunters on a first-come, first-serve basis.
 - (5) Blind restrictions shall not apply to falconers when gun or archery seasons are not open.

Section 5. Exceptions for Wildlife Management Areas. (1) Statewide waterfowl seasons apply unless otherwise stated in this section.

- (2) If specific hunting dates are given in this section, persons may hunt waterfowl only on these dates.
- (3) Ballard Wildlife Management Area. Waterfowl hunting requirements are stipulated in 301 KAR 2:221.
- (4) Barkley Lake Wildlife Management Area.
 - (a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.
 - (b) Persons shall establish permanent blinds within ten (10) yards of their assigned and numbered blind markers within:
 1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.
 2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
 - (c) The following refuge areas are closed to the public:
 1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);
 - a. Including the row of islands on the west side of the main river channel; and
 - b. Not including Taylor Bay and Jake Fork Bay.
 2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.
 - (d) From October 15 through March 15, persons shall not hunt:
 1. Within 200 yards of; or
 2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.
 - (5) Barren River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.
 - (6) Buckhorn Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regula-

tion.

- (7) Cane Creek Wildlife Management Area is closed to waterfowl hunting.
- (8) Cumberland Lake Wildlife Management Area. The following sections are closed to the public from October 15 through March 15:
 - (a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
 - (b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.
- (9) Cyprus-AMEX Wildlife Management Area is closed to waterfowl hunting.
- (10) Grayson Lake Wildlife Management Area. Persons shall not hunt waterfowl:
 - (a) Within the no wake zone at the dam site marina;
 - (b) From the shores of Camp Webb;
 - (c) From the shores of the state park; or
 - (d) On Deer Creek Fork of Grayson Lake.
- (11) Green River Lake Wildlife Management Area.
 - (a) Permanent blinds may be used as specified in Section 4 of this administrative regulation
 - (b) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.
- (12) Higginson-Henry Wildlife Management Area. Portions marked by signs are closed to the public.
- (13) Kaler Bottoms Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.
- (14) Land Between the Lakes.
 - (a) The following portions are closed to the public from November 1 through March 15:
 1. Long Creek Pond.
 2. The eastern one-third (1/3) of Smith Bay.
 3. The eastern two-thirds (2/3) of Duncan Bay.
 - (b) The following portions are closed to waterfowl hunting:
 1. The Environmental Education Center.
 2. Energy Lake.
 - (c) Persons shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:
 1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
 2. From boats over flooded portions of Land Between the Lakes when lake levels are above elevation 359.
 - (d) Persons shall not hunt waterfowl on inland areas during quota deer hunts.
 - (e) Persons shall not establish or use permanent blinds:
 1. On inland areas; or
 2. Along the Kentucky Lake shoreline of Land Between the Lakes.
 - (f) Waterfowl hunters shall remove decoys and personal effects daily.
- (15) Mill Creek Wildlife Management Area is closed to waterfowl hunting.
- (16) Nolin River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.
- (17) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.
- (18) Ohio River Waterfowl Refuge.
 - (a) Persons shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.
 - (b) Stewart Island is closed to the public from October 15 through March 15, except for quota deer hunting.
- (19) Peabody Wildlife Management Area.
 - (a) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.
 - (b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:
 1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.
 2. Sinclair Mine, as bounded by railroad tracks, the haul road and

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posted signs.

3. Homestead, as bounded by the haul road and the Green River.

(20) Peal Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(21) Pioneer Weapons Wildlife Management Area.

(a) Waterfowl hunters may use breech-loading shotguns along the shoreline of Cave Run Lake.

(b) Waterfowl hunters shall use muzzle-loading shotguns elsewhere on the area.

(22) Redbird Wildlife Management Area is closed to waterfowl hunting.

(23) The main block of Robinson Forest Wildlife Management Area is closed to waterfowl hunting.

(24) Sloughs Wildlife Management Area.

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) On the Grassy-Pond Powells Lake Unit, waterfowl hunters:

1. Shall use permanent blinds provided by the department.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(c) On the Jenny Hole-Highlands Creek Unit, waterfowl hunters:

1. Shall not establish or hunt from blinds closer than 200 yards from another hunting party.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(d) If the Ohio River reaches a level that requires boat access, waterfowl hunters:

1. May hunt from boats without regard to department blinds.

2. Shall not hunt closer than 200 yards from another boat.

(e) Waterfowl hunters on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from blinds assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.

2. May occupy blinds not claimed by the permittee by the opening of shooting hours.

3. Shall not have more than fifteen (15) shotgun shells in their possession.

4. Shall be accompanied by an adult if under eighteen (18) years of age.

(f) The Crenshaw and Duncan tracts are closed to hunting except waterfowl from October 15 through March 15.

(g) The remainder of the Sauerheber Unit is closed to the public from October 15 through March 15.

(25) Swan Lake Wildlife Management Area.

(a) Portions marked by signs are closed to the public from October 15 through March 15, except for waterfowl hunting as stipulated below.

(b) Goose season: December 14 through January 28.

(c) Duck, coot and merganser season: December 14 through January 14.

(d) Persons shall not hunt on Mondays, Tuesdays, or Wednesdays.

(e) Waterfowl hunters:

1. Shall hunt from blinds assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.

2. May occupy blinds not claimed by the permittee by the opening of shooting hours.

3. Shall not have more than fifteen (15) shotgun shells in their possession.

4. Shall be accompanied by an adult if under eighteen (18) years of age.

(26) Taylorsville Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by signs is closed to the public from the Monday following the scheduled quota deer hunt through March 15.

(27) Westvaco Wildlife Management Area.

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.
(b) The portion south of the Westvaco Road as posted by signs is closed to the public from November 1 through March 15.

(c) Persons shall obtain a Westvaco Permit before hunting.

(28) White City Wildlife Management Area. Shooting hours are from one-half (1/2) hour before sunrise until 2 p.m.

(29) Yellowbank Wildlife Management Area. The area designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

Section 6. Applying for Waterfowl Hunts. (1) Persons wishing to apply to hunt waterfowl on Ballard, Swan Lake or the Sauerheber unit of Sloughs wildlife management areas shall:

(a) Apply on forms provided by the department.

(b) Submit completed application forms before the deadline date on the form.

(2) Forms which are not completed according to the instructions on the form shall be disqualified from the drawing.

(3) Persons shall not apply more than one (1) time for each hunt.

(4) Each hunter drawn may bring up to three (3) additional hunters.

(5) The following are incorporated by reference. They may be obtained from or examined at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, during regular business hours.

(a) Sloughs Wildlife Management Area Waterfowl Hunting Application.

(b) Ballard Wildlife Management Area Goose Hunt Application.

(c) Swan Lake Wildlife Management Area Waterfowl Hunting Application.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Roy Grimes

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

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

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(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: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and other specialized hunting requirements to various wildlife areas across the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 60, No 189, Friday, September 29, 1995.

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

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1, 1995 and January 21, 1996. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1995 and March 1, 1996, and season framework for white-fronted geese is between the Saturday nearest October 1, 1995 through January 31, 1996.

The Canada goose season in the Western Goose Zone season may extend for 65 days (80 days in Fulton County) between October 1, 1995 and January 31, 1996 (except February 15, 1996 in Fulton County), or until the harvest of 34,500 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall be 10 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1995 and March 10, 1996 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 35 days or 30 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates were adjusted to optimizing public use within sound waterfowl conservation practices.

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TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:223. Waterfowl reporting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 59 CFR 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.300, 150.330, 150.600, 150.603, 59 CFR 20

NECESSITY AND FUNCTION: Monitoring hunter harvest is necessary because of federally mandated quotas or limited populations in goose restoration areas. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner. This amendment is necessary to allow hunting area operators to submit weekly report cards instead of harvest register. [The substance of this administrative regulation was contained in 301 KAR 2:220, which is being repealed and replaced with administrative regulations which better meet the formatting and wording requirements of KRS Chapter 13A. This administrative regulation imposes no new requirements or restrictions over those contained in 301 KAR 2:220.]

Section 1. Definitions. (1) "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl.

(2) "Noncommercial waterfowl hunting area" means private land or water where a fee is not charged for hunting waterfowl.

(3) "Operator" means:

(a) The owner, manager or other person in charge of a commercial waterfowl hunting area;

(b) The owner or tenant of a noncommercial waterfowl hunting area; or

(c) A person to whom the owner or tenant has assigned, in writing on forms provided by the department, exclusive control of waterfowl hunting rights on a noncommercial waterfowl hunting area.

Section 2. In the Ballard Reporting Area or the Henderson-Union Reporting Area, as described in 301 KAR 2:224:

(1) Operators of commercial waterfowl hunting areas shall obtain a commercial waterfowl shooting area permit for each area they operate.

(a) A tract of land divided by a public road may operate under one (1) permit.

(b) Tracts of land separated by property belonging to another person shall require separate permits for each tract.

(2) Operators of commercial waterfowl hunting areas shall:

(a) Display the permit openly on the area, and

(b) Maintain complete and accurate records of waterfowl harvested on daily waterfowl harvest register forms provided by the department.

(3) Operators of noncommercial waterfowl hunting areas:

(a) Shall obtain a noncommercial migratory goose hunting permit from the department.

(b) Shall display the permit openly on the area.

(c) Shall make daily waterfowl harvest register forms available to goose hunters.

(d) Shall require goose hunters to:

1. Enter their names, addresses, hunting license numbers and the date on the register before hunting; and

2. Enter the number of geese taken by species before leaving the area.

(4) Operators of commercial or noncommercial waterfowl hunting areas:

(a) Shall close each week's waterfowl harvest register after shooting hours on Wednesday.

(b) Shall mail or hand-deliver the harvest report card [original form] to the address indicated so that it arrives no later than the following Monday.

(c) Shall mail or hand deliver the original forms to the address indicated so that they arrive within five (5) days after the close of goose season.

(d) ~~(e)~~ Shall retain forms for two (2) months after the close of goose season.

(e) ~~(f)~~ Shall allow agents of the department or the U. S. Fish and Wildlife Service to inspect permits and harvest records.

(5) Persons hunting geese on commercial or noncommercial waterfowl hunting areas:

(a) Shall enter their names, addresses, hunting license numbers and the date on the register form before hunting, and

(b) Shall record the number of geese taken by species on the register form before leaving the area.

(6) Persons hunting geese on public areas, including the Ohio or Mississippi Rivers or their overflow areas, within the Ballard or Henderson-Union Reporting Areas:

(a) Shall obtain a daily waterfowl harvest register from the department.

(b) Before hunting, shall enter on the register:

1. Their names, addresses, hunting license numbers and the date.

2. If an individual is carrying the form for a hunting party, the name, address and hunting license number of each member of the party, and the date.

(c) Shall record on the register the number of geese by species taken each day.

(d) Shall mail or hand deliver the completed register to the address indicated on the form so that it arrives no later than Monday of each week.

Section 3. Persons hunting geese in the West-Central or ~~Northeast~~ ~~Cave Run~~ Special Hunt Zones ~~[Regions]~~, as defined in 301 KAR 2:224:

(1) Shall carry a permit to hunt Canada Geese on special areas form.

(2) Shall complete and return the harvest survey portion of the permit within ten (10) days after the season closes. ~~[by January 6.]~~

(3) Shall not be eligible for permits the following year if they do not return harvest surveys within ten (10) days after the season closes. ~~[by January 6.]~~

Section 4. Items Incorporated by Reference. The following forms are incorporated by reference. They are available for examination or copying from the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. until 4:30 p.m. eastern time during business days.

(1) Kentucky permit to hunt canada geese on special areas.

(2) Noncommercial migratory goose hunting permit.

(3) Daily waterfowl harvest register.

(4) Application for commercial waterfowl shooting area permit.

(5) Assignment of waterfowl hunting rights.

(6) Harvest report card.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 1996, five days prior to the hearing, of their

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intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Roy Grimes

(1) Type and number of entities affected: Approximately 500 individuals or businesses will be required to report their goose harvest.

(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. Reporting of goose harvest to determine if quotas are reached is a federal requirement. Waterfowl hunting generates substantial economic activity in the areas of Western Kentucky covered by this administrative regulation, which would be lost if we do not meet this federal requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Costs of obtaining permits and mailing forms, as required by this regulation, are minimal.

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

1. First year following implementation: Waterfowl hunters, as well as operators of commercial and noncommercial waterfowl hunting areas, are required to obtain permits and report goose harvest. This is an existing requirement, so this administrative regulation will neither increase or decrease costs.

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 is an existing activity; neither costs nor savings will be impacted by this administrative regulation.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department must print and distribute permits and harvest forms and tabulate waterfowl harvest from returned forms.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund revenues.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This is a continuing regulation which will have no additional positive or negative economic impact.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a federally mandated requirement. The alternative is not permit Canada goose hunting in two of the areas of

the state with high goose populations. This is an unacceptable alternative because geese are a renewable natural resource which provide considerable recreational opportunity and economic benefit in these areas.

(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:

(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: The substance of this administrative regulation was contained in 301 KAR 2:220, which is being repealed and replaced with regulations which meet the formatting and language requirements of KRS Chapter 13A. This administrative regulation contains no substantive changes from 301 KAR 2:220.

(11) TIERING: Is tiering applied? Tiering was used to the extent that differing requirements are placed on operators of commercial waterfowl hunting areas, operators of noncommercial waterfowl hunting areas, and individual hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 60, No 189, Friday, September 29, 1995.

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

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1, 1995 and January 21, 1996. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1995 and March 1, 1996, and season framework for white-fronted geese is between the Saturday nearest October 1, 1995 through January 31, 1996.

The Canada goose season in the Western Goose Zone season may extend for 65 days (80 days in Fulton County) between October 1, 1995 and January 31, 1996 (except February 15, 1996 in Fulton County), or until the harvest of 34,500 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall be 10 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall

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between September 1, 1995 and March 10, 1996 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 35 days or 30 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates were adjusted to optimizing public use within sound waterfowl conservation practices.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:224. Waterfowl hunting zones.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 59 CFR 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.330, 150.600, 150.603, 59 CFR 20

NECESSITY AND FUNCTION: Unevenly distributed waterfowl resources and federal requirements necessitate different season dates and harvest administrative regulations in different sections of the Commonwealth. This administrative regulation establishes waterfowl hunting zones. This amendment is necessary to change the names of the Cave Run Lake Special Hunt Region and the West Central Special Hunt Region. [The substance of this administrative regulation is contained in 301 KAR 2:220, which is being repealed and replaced by administrative regulations which better meet the formatting and language requirements of KRS Chapter 13A. This administrative regulation makes no changes in existing waterfowl hunting zones.]

Section 1. Goose Hunting Zones. (1) The Western Goose Zone includes Henderson County and the portion of Kentucky west of:

- (a) US 60 from the Henderson-Union County line to US 641;
- (b) US 641 to Interstate 24;
- (c) Interstate 24 to the Purchase Parkway; and
- (d) The Purchase Parkway.

(2) The Ballard Reporting Area includes the portion of Ballard County north or west of:

- (a) The Ballard-McCracken County line to State Road 358;
- (b) State Road 358 to US 60;
- (c) US 60 to the city limits of Wickliffe;
- (d) The city limits of Wickliffe to the center of the Mississippi River.

(3) Counties associated with the Ballard Reporting Area include:

- (a) The portion of Ballard County not included in the Ballard Reporting Area;
- (b) Carlisle and McCracken Counties; and
- (c) The portions of Fulton, Graves, Hickman and Marshall Counties in the Western Goose Zone.

(4) The Henderson-Union Reporting Area includes Henderson County and the portion of Union County in the Western Goose Zone.

(5) Counties associated with the Henderson-Union Reporting Area include those portions of Crittenden, Livingston and Lyon Counties in the Western Goose Zone.

(6) The Pennyroyal-Coalfield Goose Zone includes the area between the Western Goose Zone and:

(a) Interstate 65 from the Tennessee line to the Green River Parkway;

(b) The Green River Parkway to the US 60 By-pass at Owensboro;

(c) The U.S. 60 By-pass to U.S. 231; and

(d) U.S. 231 to the Indiana border.

(7) The Eastern Goose Zone includes the portions of Kentucky not included in the Western or Pennyroyal-Coalfield Goose Zones.

(8) The West-Central Special Hunt Zone [Region] includes:

(a) Muhlenburg County;

(b) Ohio County south of Rough River;

(c) Butler County west of Highway 79 and north of Highway 70;

(d) Hopkins County:

1. East of Highways 814 and 109;

2. South of US 41A between Highways 814 and Madisonville; and

3. South of Highway 85 east of Madisonville.

(9) The Northeast [Cave Run] Special Hunt Zone [Region] includes Bath, Menifee, Morgan and Rowan Counties, except Paintsville Lake and its shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1) The Western Duck Zone is the portion of Kentucky included in the Western and Pennyroyal-Coalfield Goose Zones.

(2) The Eastern Duck Zone is the portion of Kentucky not included in the Western Duck Zone.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Roy Grimes

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

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

(b) Cost of doing business in the geographical area in which the

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administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(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: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 60, No 189, Friday, September 29, 1995.

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

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 50 day season with a five bird bag limit between the Saturday closest to October 1, 1995 and January 21, 1996. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 5 ducks and may not include more than 4 mallards (no more than 1 hen mallard), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1995 and March 1, 1996, and season framework for white-fronted geese is between the Saturday nearest October 1, 1995 through January 31, 1996.

The Canada goose season in the Western Goose Zone season may extend for 65 days (80 days in Fulton County) between October 1, 1995 and January 31, 1996 (except February 15, 1996 in Fulton County), or until the harvest of 34,500 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall be 10 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1995 and March 10, 1996 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 35 days or 30 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates were adjusted to optimizing public use within sound waterfowl conservation practices.

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TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 6:001. Definitions for 301 KAR Chapter 6.

RELATES TO: KRS Chapter 235

STATUTORY AUTHORITY: KRS 235.320

NECESSITY AND FUNCTION: To define the terms used in 301 KAR Chapter 6. This amendment is necessary to add definitions for "Type V personal flotation device" and "manually propelled racing vessels". [The definitions in this administrative regulation were found throughout 402 KAR 4:010 through 4:100. The transfer of the Division of Water Patrol to the Department of Fish and Wildlife Resources necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A.]

Section 1. Definitions. (1) "Adequate ventilation" means ventilation which met Boating Industry Association and U.S. Coast Guard requirements at the time the vessel was manufactured.

(2) "Airborne device" means a kite, parachute or similar device which holds a person aloft when towed behind a moving vessel.

(3) "Class A" means vessels less than sixteen (16) feet in length.

(4) "Class 1" means vessels sixteen (16) feet or over and less than twenty-six (26) feet in length.

(5) "Class 2" means vessels twenty-six (26) feet or over and less than forty (40) feet in length.

(6) "Class 3" means vessels forty (40) feet or more in length.

(7) "Crossing" means a situation in which a vessel approach another from an angle of 112.5 degrees or less from either side of the bow.

(8) "Documented by the federal government" means a vessel which has been registered with, and issued official registration documents by, the United States Coast Guard.

(9) "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

(10) "International diving flag" means a red flag with a white stripe running diagonally from an upper corner to the opposite lower corner.

(11) "Length" means the longest dimension of a boat measured along the centerline from the bow to the stern, but not including outboard motors, swim platforms, or similar attachments.

(12) "Manually propelled racing vessel" means a racing shell, rowing scull, racing canoe or racing kayak recognized by national or international racing associations or use in competitive racing, and not designed to carry or not carrying equipment not solely for competitive racing.

(13) "Overtaking" means a situation in which a faster vessel approaches a slower vessel from an angle of more than 112.5 degrees from either side of the bow of the slower vessel.

(14) ~~[(13)]~~ "Passing" means a situation in which vessels approach and pass each other from head on or nearly so.

(15) ~~[(14)]~~ "Type I" means a personal flotation device:

(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and
(b) Having more than twenty (20) pounds of buoyancy.

(16) ~~[(15)]~~ "Type II" means a personal flotation device:

(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and
(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.

(17) ~~[(16)]~~ "Type III" means a personal flotation device:

(a) Designed to keep a conscious person in a vertical or slightly backward position; and
(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.

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(18) ~~[(17)]~~ "Type IV" means a personal flotation device:

(a) Designed to be thrown to a person in the water and not worn; and
(b) Having at least sixteen and one-half (16.5) pounds of buoyancy.

(19) "Type V" means a special use personal flotation device intended and approved by the U.S. Coast Guard for specific activities.

(20) ~~[(18)]~~ "Water skis" means rigid or inflatable skis, kneeboards, tubes or similar devices upon or in which a person is towed behind a moving vessel.

(21) ~~[(19)]~~ "Water skiing" means:

(a) The act of riding in or upon water skis; or
(b) Barefoot skiing.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 3, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Donovan Smith

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This repromulgation of existing administrative regulations will not affect cost of living or employment.

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

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

1. First year following implementation: Existing requirements are unchanged by the repromulgation of this administrative regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings will be incurred.

2. Continuing costs or savings: No additional costs or savings will be incurred.

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

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

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

(6) To the 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 anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(b) Kentucky: No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to repromulgating boating regulations. Failure to repromulgate administrative regulations dealing with boating safety could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 6:020. Boating safety equipment.

RELATES TO: KRS 235.200, 235.205, 235.280

STATUTORY AUTHORITY: KRS 235.200, 235.280, 235.320

NECESSITY AND FUNCTION: To prescribe the minimum boating equipment necessary to help prevent accident, injury or deaths on Kentucky waterways. This amendment is necessary to bring personal flotation device requirements into compliance with current federal standards. (This administrative regulation contains the substance of 402 KAR 4:060, 4:060, 4:070, 4:080, 4:090, 4:100 and 4:120. The administrative transfer of the Division of Water Patrol necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish

~~and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A.~~

Section 1. Engine Safety Equipment Requirements. (1) Except as provided in subsection (2) of this section, persons shall not operate vessels with enclosed engines without effective U.S. Coast Guard-approved flame arresters on carburetors.

(2) Persons may operate the following without flame arresters:

(a) Outboard engines; or

(b) Vessels with engines completely open by design and not originally equipped with Underwriters Laboratory or U.S. Coast Guard-approved flame arresters.

(3) Persons shall not operate vessels without adequate ventilation of bilges, engine compartments, fuel compartments or other enclosures.

(4) Persons shall not operate vessels originally equipped with a carburetor drip pan without the drip pan in place and maintained in a functioning condition.

(5) Persons shall not operate vessels whose bilges are not maintained free from oil or grease.

Section 2. Lighting Equipment. (1) Between actual sunset and sunrise:

(a) Operators of Class A or Class 1 motorboats shall display:

1. A white light near the stern of the vessel visible in a 360 degree arc.

2. A combined red and green light near the bow of the vessel which is:

a. Lower than the white light; and

b. As stipulated in subsection (2) of this section.

(b) Operators of Class 2 or Class 3 motorboats shall display:

1. A white light mounted near the bow of the vessel, which is visible from dead ahead to 112.5 degrees on either side of the vehicle.

2. A white light mounted near the stern of the vessel which is:

a. Higher than the forward white light; and

b. Visible in a 360 degree arc.

3. Separate red and green lights as stipulated in subsection (2) of this section.

(c) Operators of Class 1 or larger vessels propelled by sail alone shall display:

1. Red and green lights as stipulated in subsection (2) of this section; and

2. A white stern light which shows in an arc of 135 degrees behind the vessel.

(d) Operators of manually-powered vessels or sailboats less than twenty-two feet, nine inches (22'9") shall:

1. Carry aboard and have immediately available for use a white light of sufficient intensity to illuminate the vessel and its occupants; and

2. Display the white light in time to prevent a collision from an approaching vessel.

(e) Persons operating or responsible for vessels anchored or adrift in a normal navigation channel or passageway shall display a white light visible in a 360 degree arc.

(2) Combination or separate red and green lights shall:

(a) Have an arc of visibility extending from dead ahead to 112.5 degrees on either side of the vessel;

(b) Show the red light on the port side, and the green light on the starboard side, of the vessel; and

(c) Be visible at a distance of at least one (1) mile on a dark night with clear atmosphere.

(3) White lights required by this section shall be visible at a distance of at least two (2) miles on a dark night with clear atmosphere.

(4) On vessels under way between sunset to sunrise, operators shall not display other lights which could be mistaken for the lights

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specified in this section.

Section 3. Signaling Devices. (1) Operators of Class 1 or larger vessels shall have on board a hand-, mouth- or power-operated signaling device:

- (a) Capable of producing a blast of two (2) seconds duration; and
- (b) Audible for:
 - 1. One-half (1/2) mile for Class 1 vessels.
 - 2. One (1) mile for Class 2 vessels.
 - 3. One and one-half (1-1/2) miles for Class 3 vessels.

(2) Nothing in this administrative regulation shall exempt a vessel from additional sound devices required by the U.S. Coast Guard or other governmental agencies.

Section 4. Personal Flotation Devices. (1) Operators of Classes 1, 2, and 3 recreational vessels shall have on board a minimum of:

(a) One (1) Type I, Type II or Type III personal flotation device for each person on board the vessel; and

(b) Except for canoes or kayaks, one (1) Type IV personal flotation device.

(2) Operators of Class A recreational vessels [~~canoes and kayaks~~] shall have on board a minimum of one (1) Type I, Type II, or Type III [~~or Type IV~~] personal flotation device for each person on board the vessel.

(3) Personal flotation devices shall be:

- (a) Approved by the U.S. Coast Guard; and
- (b) In good and serviceable condition.
- (4) Type I, II, or III personal flotation devices shall be of appropriate size for the wearer and readily accessible.
- (5) Type IV personal flotation devices shall be immediately available to the user.

(6) The following shall be exempt from the personal flotation device requirements of this section:

- (a) Manually propelled racing vessels;
- (b) Sailboards.

(7) Operators may substitute Type V personal flotation devices for other required personal flotation devices, if the Type V device:

- (a) Is approved by the U.S. Coast Guard for the type of vessel and activity in which the vessel is being used; and
- (b) Is being used according to the approved conditions on the label.

Section 5. Fire Extinguishers. (1) Operators of vessels which contain butane gas, propane gas, kerosene, gasoline or other petroleum-consuming device shall have on board at a minimum:

- (a) Class A or Class 1 vessels, one (1) B-1 fire extinguisher.
- (b) Class 2 vessels:
 - 1. With fixed systems, one (1) B-1 fire extinguisher.
 - 2. Without fixed systems, two (2) B-1 fire extinguishers.
- (c) Class 3 vessels:
 - 1. With fixed systems:
 - a. Two (2) B-1 fire extinguishers; or
 - b. One B-2 fire extinguisher.
 - 2. Without fixed systems:
 - a. Three (3) B-1 fire extinguishers; or
 - b. One (1) B-1 and one (1) B-2 fire extinguishers.
- (2) Operators shall:
 - (a) Maintain fire extinguishers in workable condition; and
 - (b) Have them available for immediate and effective use.

Section 6. Except for vessels operated for the purposes of firefighting or rescue by the United States Coast Guard, the Commonwealth of Kentucky, a county, city or other governmental entity, operators shall not display flashing, rotating or oscillating red lights on vessels.

Section 7. Vessels Without Required Safety Equipment. (1) If an

official of the department, or any other law enforcement officer, observes a vessel operating without the safety equipment specified in this administrative regulation, he may direct the operator to take whatever immediate and reasonable steps are necessary to correct the deficiency, including directing the operator to return to a mooring and remaining there until the situation creating the unsafe condition is corrected.

(2) If a vessel is directed to return to a mooring, the officer may affix a notice to the vessel:

- (a) Indicating the nature of the unsafe condition; and
- (b) Requiring its correction before the vessel is further operated.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: December 1, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Donovan Smith

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This repromulgation of existing administrative regulations will not affect cost of living or employment.

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

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

1. First year following implementation: Existing requirements are unchanged by the repromulgation of this administrative regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings will be incurred.

2. Continuing costs or savings: No additional costs or savings will be incurred.

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

(b) Reporting and paperwork requirements: No additional

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paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

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

(6) To the 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 anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(b) Kentucky: No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to repromulgating boating regulations. Failure to repromulgate administrative regulations dealing with boating safety could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: This amendment is necessary to bring Kentucky's administrative regulations into conformity with current federal boating standards

(11) TIERING: Is tiering applied? Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

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

RELATES TO: KRS 224.01-010, [224.01-100,] 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

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 provides for the defining

of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this administrative regulation or in subsequent administrative regulations, shall have the meaning given them in KRS 224.01-010 or by commonly accepted usage. As used in the administrative regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in Section 4 of this administrative regulation, and the affected facility's basis, as defined by Section 1012 of the Internal Revenue Code which has been incorporated by reference in Section 4 of this administrative regulation. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

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(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given in it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative

fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM₁₀ emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed

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replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation or chapter.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50,

which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluoro-carbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC - Association of Official Analytical Chemists

ANSI - American National Standards Institute

ASTM - American Society for Testing and Materials

BOD - Biochemical oxidant demand

BTU - British Thermal Unit

°C - Degree Celsius (centigrade)

Cal - calorie

cfm - Cubic feet per minute

CFR - Code of Federal Regulations

CH₄ - methane

CO - Carbon monoxide

CO₂ - Carbon dioxide

COD - Chemical oxidant demand

dscf - dry cubic feet at standard conditions

dscm - dry cubic meter at standard conditions

°F - Degree Fahrenheit

ft - feet

g - gram

gal - gallon

gr - grain

hr - hour

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HCl - Hydrochloric acid
 Hg - mercury
 HF - Hydrogen fluoride
 H₂O - water
 H₂S - Hydrogen sulfide
 H₂SO₄ - Sulfuric acid
 in - inch
 J - joule
 KAR - Kentucky Administrative Regulations
 kg - kilogram
 KRS - Kentucky Revised Statutes
 l - liter
 lb - pound
 m - meter
 m³ - cubic meter
 min - minute
 mg - milligram
 MJ - megajoules
 MM - million
 mm - millimeter
 mo - month
 Ng - nanograms
 N₂ - Nitrogen
 NO - Nitric oxide
 NO₂ - Nitrogen dioxide
 NO_x - Nitrogen oxides
 oz - ounce
 O₂ - oxygen
 O₃ - ozone
 ppb - parts per billion
 ppm - parts per million
 ppm (w/w) - parts per million (weight by weight)
 ug - microgram
 psia - pounds per square inch absolute
 psig - pounds per square inch gage
 S - at standard conditions
 sec - second
 SIP - State implementation plan
 SO₂ - Sulfur dioxide
 sq - square
 TAPPI - Technical Association of the Pulp and Paper Industry
 TSP - Total suspended particulates
 TSS - Total suspended solids
 U.S. EPA - United States Environmental Protection Agency
 UTM - Universal Transverse Mercator
 VOC - Volatile organic compound
 yd - yard.

Section 3. 401 KAR 50:047 Definitions. As used in 401 KAR 50:047, unless the content clearly indicates otherwise, the following terms shall have the following meanings:

- (1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.
- (2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.
- (3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.
- (4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.
- (5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce

discharges of pollutants to the ambient air.

(6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e., 1-((VOC exiting)/(VOC entering)).

(7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.

(8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.

(10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

Section 4. Reference Material. (1) Incorporation by Reference. The following documents are incorporated by reference:

(a) Depreciation, IRS Publication 534, catalog number 150640, Department of the Treasury, Internal Revenue Service; and

(b) Section 1012, Basis of Property Cost, Income Tax-Basic Rules, Internal Revenue Code.

(2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601 (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067 [325-8569];

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475 [843-5475];

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 435-6022 [430-2304];

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Owensboro, Kentucky 42303, (502) 687-7304 [686-3304]; and

(h) [49] Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on March 29, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an

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interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendment to this administrative regulation revises the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The revision includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The final rule was promulgated in the Federal Register, 60 FR 31637, June 16, 1995. No entities are directly affected by the revision to the definition. The addition of a compound of negligible photochemical reactivity indirectly affects sources which emit this compound and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. However, acetone continues to be regulated under the state toxic regulations, 401 KAR 63:021 and 401 KAR 63:022.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994 and the final rulemaking in Federal Register, 60 FR 31637, June 16, 1995.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above.

(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 compliance, reporting, or paperwork requirements in this administrative regulation.
2. Second and subsequent years: Please see (2)(c)1. above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1. and 2. above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated an amendment to the definition of volatile organic compound (VOC) which adds acetone to the list of excluded compounds in the Federal Register, 60 FR 31637, June 16, 1995. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for acetone in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. Further, the U.S. EPA will not enforce measures controlling acetone as part of a federally approved ozone State Implementation Plan

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(SIP). This amendment revises the state VOC definition so that acetone is excluded and compatible with the U.S. EPA definition.

2. State compliance standards. There are no compliance standards. This federal rule defines volatile organic compound.

3. Minimum or uniform standards contained in the federal mandate. Same as 2. above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

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 provides for the defining of terms used in 401 KAR Chapter 51.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential

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emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation,

political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

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(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no saturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no saturations; and

(d) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine. These compounds have

been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 51 shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH₄ - methane
CO - Carbon monoxide
CO₂ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H₂O - water
H₂S - Hydrogen sulfide
H₂SO₄ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m³ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage

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S - at standard conditions
sec - second
SIP - State implementation plan
SO₂ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on March 29, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendment to this administrative regulation revises the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The revision includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The final rule was promulgated in the Federal Register, 60 FR 31637, June 16, 1995. No entities are directly affected by the revision to the definition. The addition of a compound of negligible photochemical reactivity indirectly affects sources which emit this compound and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. However, acetone continues to be regulated under the state toxic regulations, 401 KAR 63:021 and 401 KAR 63:022.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994 and the final rulemaking in Federal Register, 60 FR 31637, June 16, 1995.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above.

(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 compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1. above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1. and 2. above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to

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any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated an amendment to the definition of volatile organic compound (VOC) which adds acetone to the list of excluded compounds in the Federal Register, 60 FR 31637, June 16, 1995. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for acetone in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. Further, the U.S. EPA will not enforce measures controlling acetone as part of a federally approved ozone State Implementation Plan (SIP). This amendment revises the state VOC definition so that acetone is excluded and compatible with the U.S. EPA definition.

2. State compliance standards. There are no compliance standards. This federal rule defines volatile organic compound.

3. Minimum or uniform standards contained in the federal mandate. Same as 2. above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

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 provides for the defining of terms used in 401 KAR Chapter 59.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 59, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operate.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-010.

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the

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cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

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(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of Title 401, Chapter 59, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH₄ - methane
CO - Carbon monoxide
CO₂ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H₂O - water
H₂S - Hydrogen sulfide
H₂SO₄ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations

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kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m³ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO₂ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on March 29, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendment to this administrative regulation revises the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The revision includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register,

59 FR 49882, September 30, 1994. The final rule was promulgated in the Federal Register, 60 FR 31637, June 16, 1995. No entities are directly affected by the revision to the definition. The addition of a compound of negligible photochemical reactivity indirectly affects sources which emit this compound and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. However, acetone continues to be regulated under the state toxic regulations, 401 KAR 63:021 and 401 KAR 63:022.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994 and the final rulemaking in Federal Register, 60 FR 31637, June 16, 1995.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above.

(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 compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1. above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1. and 2. above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect:

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Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated an amendment to the definition of volatile organic compound (VOC) which adds acetone to the list of excluded compounds in the Federal Register, 60 FR 31637, June 16, 1995. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for acetone in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. Further, the U.S. EPA will not enforce measures controlling acetone as part of a federally approved ozone State Implementation Plan (SIP). This amendment revises the state VOC definition so that acetone is excluded and compatible with the U.S. EPA definition.

2. State compliance standards. There are no compliance standards. This federal rule defines volatile organic compound.

3. Minimum or uniform standards contained in the federal mandate. Same as 2. above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

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 provides for the defining of terms used in 401 KAR Chapter 61.

Section 1. General definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 61, unless the content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax

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purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operated.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-010 [~~224.01-100~~].

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonat-

tainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the

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approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 61, shall have the following meanings:

AC - Association of Official Analytical Chemists

ANSI - American National Standards Institute

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ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH₄ - methane
CO - Carbon monoxide
CO₂ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H₂O - water
H₂S - Hydrogen sulfide
H₂SO₄ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m³ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO₂ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on March 29, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendment to this administrative regulation revises the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The revision includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The final rule was promulgated in the Federal Register, 60 FR 31637, June 16, 1995. No entities are directly affected by the revision to the definition. The addition of a compound of negligible photochemical reactivity indirectly affects sources which emit this compound and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. However, acetone continues to be regulated under the state toxic regulations, 401 KAR 63:021 and 401 KAR 63:022.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994 and the final rulemaking in Federal Register, 60 FR 31637, June 16, 1995.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above.

(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 compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1. above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1. and 2. above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated an amendment to the definition of volatile organic compound (VOC) which adds acetone to the list of excluded compounds in the Federal Register, 60 FR 31637, June 16, 1995. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for acetone in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. Further, the U.S. EPA will not enforce measures controlling acetone as part of a federally approved ozone State Implementation Plan (SIP). This amendment revises the state VOC definition so that acetone is excluded and compatible with the U.S. EPA definition.

2. State compliance standards. There are no compliance standards. This federal rule defines volatile organic compound.

3. Minimum or uniform standards contained in the federal mandate. Same as 2. above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)**

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

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 provides for the definition of terms used in 401 KAR Chapter 63.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 63, unless the content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control

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equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any

form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases,

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operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(42) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a

result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluor-

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oethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 63, shall have the following meanings:

AOAC - Association of Official Analytical Chemists

ANSI - American National Standards Institute

ASTM - American Society for Testing and Materials

BOD - Biochemical oxidant demand

BTU - British Thermal Unit

°C - Degree Celsius (centigrade)

Cal - calorie

cfm - cubic feet per minute

CFR - Code of Federal Regulations

CH₄ - methane

CO - Carbon monoxide

CO₂ - Carbon dioxide

COD - Chemical oxidant demand

dscf - dry cubic feet at standard conditions

dscm - dry cubic meter at standard conditions

°F - Degree Fahrenheit

ft - feet

g - gram

gal - gallon

gr - grain

hr - hour

HCl - Hydrochloric acid

Hg - mercury

HF - Hydrogen fluoride

H₂O - water

H₂S - Hydrogen sulfide

H₂SO₄ - Sulfuric acid

in - inch

J - joule

KAR - Kentucky Administrative Regulations

kg - kilogram

KRS - Kentucky Revised Statutes

l - liter

lb - pound

m - meter

m³ - cubic meter

min - minute

mg - milligram

MJ - megajoules

MM - million

mm - millimeter

mo - month

Ng - nanograms

N₂ - Nitrogen

NO - Nitric oxide

NO₂ - Nitrogen dioxide

NO_x - Nitrogen oxides

oz - ounce

O₂ - oxygen

O₃ - ozone

ppb - parts per billion

ppm - parts per million

ppm (w/w) - parts per million (weight by weight)

mg - microgram

psia - pounds per square inch absolute

psig - pounds per square inch gauge

S - at standard conditions

sec - second

SIP - State implementation plan

SO₂ - Sulfur dioxide

sq - square

TAPPI - Technical Association of the Pulp and Paper Industry

TSP - Total suspended particulates

TSS - Total suspended solids

U.S. EPA - United States Environmental Protection Agency

UTM - Universal Transverse Mercator

VOC - Volatile organic compound

yd - yard

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on March 29, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendment to this administrative regulation revises the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The revision includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The final rule was promulgated in the Federal Register, 60 FR 31637, June 16, 1995. No entities are directly affected by the revision to the definition. The addition of a compound of negligible photochemical reactivity indirectly affects sources which emit this compound and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. However, acetone continues to be regulated under the state toxic regulations, 401 KAR 63:021 and 401 KAR 63:022.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in Federal Register, 59 FR 49882, September

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30, 1994 and the final rulemaking in Federal Register, 60 FR 31637, June 16, 1995.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above.

(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 compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1. above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1. and 2. above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The

federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated an amendment to the definition of volatile organic compound (VOC) which adds acetone to the list of excluded compounds in the Federal Register, 60 FR 31637, June 16, 1995. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for acetone in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. Further, the U.S. EPA will not enforce measures controlling acetone as part of a federally approved ozone State Implementation Plan (SIP). This amendment revises the state VOC definition so that acetone is excluded and compatible with the U.S. EPA definition.

2. State compliance standards. There are no compliance standards. This federal rule defines volatile organic compound.

3. Minimum or uniform standards contained in the federal mandate. Same as 2. above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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

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

RELATES TO: KRS 224.01-010, 224.10-100, 40 CFR ch. 1, Appendices B and J [A] to 40 CFR 50, 40 CFR 53, 60, 42 USC 7410
STATUTORY AUTHORITY: KRS 224.10-100

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

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of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 65.

Section 1. General definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 65, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

- (1) "Air contaminant" has the meaning given it in KRS 224.01-010.
- (2) "Air pollutant" means an air contaminant.
- (3) "Air pollution" has the meaning given it in KRS 224.01-010.
- (4) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.
- (5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
- (6) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.
- (7) "Cabinet" has the meaning given it in KRS 224.01-010.
- (8) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.
- (9) "District" has the meaning given it in KRS 224.01-010.
- (10) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
- (11) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.
- (12) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.
- (13) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.
- (14) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.
- (15) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.
- (16) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.
- (17) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
- (18) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.
- (19) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.
- (20) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.
- (21) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.
- (22) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.
- (23) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.
- (24) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.
- (25) "Standard conditions."
- (a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);
- (b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.
- (26) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.
- (27) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.
- (28) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.
- (29) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.
- (30) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.
- (31) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluoro-carbon compounds which fall into these classes:
 - (a) Cyclic, branched, or linear, completely fluorinated alkanes;
 - (b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
 - (c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
 - (d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently

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measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 65 shall have the following meanings:

"AOAC" means Association of Official Analytical Chemists
"ANSI" means American National Standards Institute.
"ASTM" means American Society for Testing and Materials.
"BOD" means Biochemical oxidant demand.
"BTU" means British Thermal Unit.
"°C" means Degree Celsius (centigrade).
"Cal" means calorie.
"cfm" means cubic feet per minute.
"CFR" means Code of Federal Regulations.
"CH₄" means methane.
"CO" means Carbon monoxide.
"CO₂" means Carbon dioxide.
"COD" means Chemical oxidant demand.
"dscf" means dry cubic feet at standard conditions.
"dscm" means dry cubic meter at standard conditions.
"°F" means Degree Fahrenheit.
"ft" means feet.
"g" means gram.
"gal" means gallon.
"gr" means grain.
"hr" means hour.
"HCl" means Hydrochloric acid.
"Hg" means mercury.
"HF" means Hydrogen fluoride.
"H₂O" means water.
"H₂S" means Hydrogen sulfide.
"H₂SO₄" means Sulfuric acid.
"in" means inch.
"J" means joule.
"KAR" means Kentucky Administrative Regulations.
"kg" means kilogram.
"KRS" means Kentucky Revised Statutes.
"l" means liter.
"lb" means pound.
"m" means meter.
"m³" means cubic meter.
"min" means minute.
"mg" means milligram.
"MJ" means megajoules.
"MM" means million.
"mm" means millimeter.
"mo" means month.
"Ng" means nanograms.
"N₂" means Nitrogen.
"NO" means Nitric oxide.
"NO₂" means Nitrogen dioxide.
"NO_x" means Nitrogen oxides.
"oz" means ounce.
"O₂" means oxygen.
"O₃" means ozone.
"ppb" means parts per billion.
"ppm" means parts per million.
"ppm (w/w)" means parts per million (weight by weight).
"µg" means microgram.
"psia" means pounds per square inch absolute.
"psig" means pounds per square inch gage.
"S" means at standard conditions.
"sec" means second.
"SIP" means State implementation plan.
"SO₂" means Sulfur dioxide.

"sq" means square.

"TAPPI" means Technical Association of the Pulp and Paper Industry.

"TSP" means Total suspended particulates.

"TSS" means Total suspended solids.

"U.S. EPA" means United States Environmental Protection Agency.

"UTM" means Universal Transverse Mercator.

"VOC" means Volatile organic compound.

"yd" means yard.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on March 29, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendment to this administrative regulation revises the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The revision includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The final rule was promulgated in the Federal Register, 60 FR 31637, June 16, 1995. No entities are directly affected by the revision to the definition. The addition of a compound of negligible photochemical reactivity indirectly affects sources which emit this compound and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. However, acetone continues to be regulated under the state toxic regulations, 401 KAR 63:021 and 401 KAR 63:022.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994 and the final rulemaking in Federal Register, 60 FR 31637, June 16, 1995.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1. above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part

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of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1. and 2. above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the

expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated an amendment to the definition of volatile organic compound (VOC) which adds acetone to the list of excluded compounds in the Federal Register, 60 FR 31637, June 16, 1995. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for acetone in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. Further, the U.S. EPA will not enforce measures controlling acetone as part of a federally approved ozone State Implementation Plan (SIP). This amendment revises the state VOC definition so that acetone is excluded and compatible with the U.S. EPA definition.

2. State compliance standards. There are no compliance standards. This federal rule defines volatile organic compound.

3. Minimum or uniform standards contained in the federal mandate. Same as 2. above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

JUSTICE CABINET 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 February 14 [~~January 14~~], 1996 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

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01-04-01	The operation of Contracted Adult Correctional Facilities	18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
1.6	Extraordinary Occurrence Reports		
1.9	Institutional Duty Officer	18.13	Population Categories
1.11	Population Counts and Reporting Procedures	18.15	Protective Custody (<u>Amended 2/14/96</u>)
1.12	Operation of Motor Vehicles by Department of Corrections Employees	18.17	Interstate Agreement on Transfers
2.1	Inmate Canteen	18.18	International Transfer of Inmates
2.2	Warden's Fund	19.1	Government Services Projects
2.10	Surplus Property	19.2	Community Services Projects
3.12	Institutional Staff Housing	19.3	Inmate Wage Program
4.2	Staff Training and Development	20.1	Educational Programs and Educational Good Time
4.3	Firearms and Chemical Agents Training	21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
6.1	Open Records Law	21.2	Phase I: Program Selection Assessment Criteria
7.2	Asbestos Abatement	21.3	Program Schedule - Phase II and Phase III
8.1	Occupational Exposure to Bloodborne Pathogens	21.4	Platoon Size and Composition
8.4	Emergency Preparedness (<u>Amended 2/14/96</u>)	21.5	Physical Conditions Program Component
9.1	Use of Force	21.6	Group and Individual Counseling
9.4	Transportation of Inmates to Funerals or Bedside Visits	21.7	Drug and Alcohol Abuse Counseling and Treatment
9.5	Execution	21.8	Work Programs Component
9.6	Contraband	21.9	Education and Life Management
9.7	Storage, Issue and Use of Weapons Including Chemical Agents	21.10	Auxiliary Services
9.8	Search Policy	21.11	Offenses and Penalties
9.9	Transportation of Inmates (<u>Amended 2/14/96</u>)	22.1	Privilege Trips
9.10	Security Inspections	23.1	Religion
9.11	Tool Control	25.1	Gratuities
9.18	Informants	25.2	Public Official Notification of Release of an Inmate
9.19	Found Lost or Abandoned Property	25.3	Prerelease Program
10.2	Special Management Inmates (<u>Amended 2/14/96</u>)	25.4	Inmate Furloughs
10.3	Safekeepers	25.5	Community Center Program
10.4	Special Needs Inmates	25.6	Expedient Release [Amended January 11, 1996]
11.2	Nutritional Adequacy of the Diet for Inmates	25.7	Extended Furloughs
11.3	Special Diet Procedures	25.8	Administrative Release of Inmates
13.1	Pharmacy Policy and Formulary	25.10	Victim Notification
13.2	Health Maintenance Services	25.11	Probation and Parole Procedures
13.3	Medical Alert System	27-01-01	Duties of Probation and Parole Officers
13.4	Health Program Audits	27-02-01	Workload Formula Supervisor/Staff Ratio
13.5	Acquired Immune Deficiency Syndrome	27-03-01	Testimony, Court Demeanor and Availability of Legal Services
13.6	Sex Offender Treatment Program	27-05-01	
13.7	Involuntary Psychotropic Medication Policy	27-06-01	Availability of Supervision Services
13.9	Dental Services	27-06-02	Equal Access to Services
14.2	Personal Hygiene Items	27-07-01	Cooperation with Law Enforcement Agencies
14.3	Marriage of Inmates	27-08-01	Use of Force
14.4	Legal Services Program	27-09-01	Kentucky Community Resources Directory
14.6	Inmate Grievance Procedures	27-10-01	Advanced Supervision
15.1	Hair and Grooming Standards	27-11-01	Intensive Supervision
15.2	Offenses and Penalties	27-12-01	Supervision: Case Classification
15.3	Meritorious Good Time (<u>Amended 2/14/96</u>)	27-12-02	Risk/Needs Assessment
15-05-01	Restoration of Forfeited Good Time	27-12-03	Initial Interview
15.6	Adjustment Procedures and Programs	27-12-04	Conditions of Regular Supervision/Request for Modification
15.7	Inmate Account Restriction		
15.8	Unauthorized Substance Abuse Testing (<u>Added 2/14/96</u>)	27-12-05	Releasee's Report
16.1	Inmate Visits	27-12-06	Grievance Procedures for Offenders
16.2	Inmate Correspondence	27-12-07	Employment, Education/Vocational Referral
16.3	Telephone Calls	27-12-08	Supervision Plan
16.4	Inmate Packages	27-12-09	Casebook
17-01-01	Inmate Personal Property	27-12-10	Guidelines for Monitoring Supervision Fee
17.2	Assessment Center Operations	27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
17.3	Controlled Intake of Inmates		
18.1	Classification of the Inmate	27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
18.5	Custody and Security Guidelines		
18.6	Classification Document	27-12-13	Community Service Work
18.7	Transfers	27-12-14	Client Travel Restrictions
18.9	Out-of-state Transfers	27-13-01	Drug and Alcohol Testing of Offenders
18-10-01	Preparole Progress Reports	27-13-02	Alcohol Detection
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures	27-14-01	Interstate Compact Transfers
		27-14-02	Interstate Compact Out-of-state Probation and Parole Violation

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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
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program
28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 22, 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

Agency Contact Person: Tamela Biggs

(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

(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.

JUSTICE CABINET Department of Corrections (Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. (1)(a) Northpoint Training Center policies and proce-

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dures, February 13, 1996 (~~November 14, 1995~~), are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:

- | | | | |
|-------------------------|---|--------------|---|
| NTC 01-05-01 | Extraordinary Occurrence Reports [(Amended 11/14/95)] | NTC 13-11-01 | Inmate Health Screening and Evaluation |
| NTC 01-10-01 | Legal Assistance for Corrections Staff [(Amended 11/14/95)] | NTC 13-12-01 | Special Health Care Programs |
| NTC 01-11-01 | Political Activities of Merit Employees [(Amended 11/14/95)] | NTC 13-17-01 | Inmates Assigned to Health Services |
| NTC 01-15-01 | Establishment of the Warden as Chief Executive Officer (<u>Amended 2/13/96</u>) | NTC 13-19-01 | Mental Health Care Program |
| NTC 01-17-01 | Relationships with Public, Media and Other Agencies [(Amended 11/14/95)] | NTC 13-19-03 | Suicide Prevention and Intervention Program |
| NTC 02-02-02 | Warden's Participation in the Agency Budgeting Process | NTC 13-20-01 | Infectious Disease |
| NTC 02-03-01 | Fiscal Management: Audits (<u>Amended 2/13/96</u>) | NTC 13-20-02 | Infection Control |
| NTC 02-04-01 | Internal Control and Monitoring of Accounting Procedures | NTC 13-20-03 | Disposal of Biohazard Waste |
| NTC 02-07-02 | Chapel Fund | NTC 13-21-01 | Vision Care and Optometry Services |
| NTC 02-08-01 | Inmate Canteen | NTC 13-22-01 | Informed Consent |
| NTC 02-10-01 | Insurance Coverage | NTC 13-23-01 | Special Needs Inmates |
| NTC 02-12-01 | Inmate Accounts | NTC 14-01-01 | Legal Services Program |
| NTC 04-01-01 | Training and Staff Development | NTC 14-01-02 | Receiving, Viewing, Handling and Storage of Video Tapes |
| NTC 04-04-01 | Firearms and Chemical Agents Training (<u>Amended 2/13/96</u>) | NTC 14-02-01 | Inmate Grievance Procedure |
| NTC 06-01-01 | Offender Records [(Amended 11/14/95)] | NTC 14-03-01 | Inmate Rights and Responsibilities |
| NTC 06-01-02 | Records - Release of Information | NTC 14-03-02 | Board of Claims |
| NTC 06-01-03 | Taking Offender Record Folders onto the Yard [(Amended 11/14/95)] | NTC 15-01-01 | Restoration of Forfeited Good Time |
| NTC 08-05-01 | The Fire and Safety Officer (<u>Amended 2/13/96</u>) | NTC 15-02-01 | Due Process/Disciplinary Procedures |
| NTC 08-05-02 | Fire Procedures (<u>Amended 2/13/96</u>) | NTC 15-02-02 | Extra Duty Assignments |
| NTC 08-05-03 | Fire Prevention (<u>Amended 2/13/96</u>) | NTC 15-02-03 | Hearing Officer |
| NTC 08-05-04 | Storage of Flammables and Dangerous Chemicals and Their Use | NTC 15-03-01 | Rules for Inmates Assigned to Outside Detail |
| NTC 08-07-01 | Safety Standards | NTC 15-03-02 | Rules and Regulations for General Population Dormitories |
| NTC 10-01-01 | Special Management Unit (<u>Amended 2/13/96</u>) | NTC 15-04-01 | Inmate Identification |
| NTC 10-02-01 | Protective Custody Unit (Deleted 2/13/96) | NTC 16-01-01 | Mail Regulations |
| NTC 10-03-01 | Protective Custody (<u>Amended 2/13/96</u>) | NTC 16-02-01 | Visiting |
| NTC 11-03-01 | Food Services: General Guidelines (<u>Amended 2/13/96</u>) | NTC 16-02-02 | Extended and Special Visits |
| NTC 11-04-01 | Food Service: Meals | NTC 16-02-03 | Honor Dorm and Outside Detail Dorm Visiting |
| NTC 11-04-02 | Menu, Nutrition and Special Diets (<u>Amended 2/13/96</u>) | NTC 16-02-04 | Controlled Visitation [(Amended 11/14/95)] |
| NTC 11-05-02 | Health Standards and Regulations for Food Service Employees | NTC 16-03-01 | Inmate Furloughs |
| NTC 11-06-01 | Inspection and Sanitation (<u>Amended 2/13/96</u>) | NTC 16-05-01 | Telephone Use and Control |
| NTC 11-07-01 | Purchasing and Storage of Food Products | NTC 17-01-01 | Personal Property Control |
| NTC 12-01-01 | Institutional Inspection | NTC 17-01-02 | Authorized Inmate Personal Property |
| NTC 12-02-01 | Personal Hygiene for Inmates; Clothing and Linens | NTC 17-01-03 | Unauthorized Inmate Property |
| NTC 12-02-02 | Issuance of Personal Hygiene Products | NTC 17-01-04 | Disposition of Unauthorized Property |
| NTC 13-01-01 | Emergency Medical Care Plan | NTC 17-01-05 | State Issue and Required Inmate Clothing |
| NTC 13-01-02 | Emergency and Specialized Health Services | NTC 17-03-01 | Assessment/Orientation |
| NTC 13-02-01 | Administration and Authority for Health Services | NTC 18-01-01 | Parole Progress Report |
| NTC 13-03-01 | Sick Call and Pill Call | NTC 18-02-01 | Classification |
| NTC 13-04-01 | Utilization of Pharmaceutical Products | NTC 18-02-02 | Classification - 48 Hour Notification |
| NTC 13-05-01 | Dental Services | NTC 18-03-01 | Special Notice Form |
| NTC 13-05-03 | Dental Radiation Levels | NTC 18-05-01 | Transfers of Inmates |
| NTC 13-05-04 | Attest Steam Incubator | NTC 18-05-02 | Transfer of Inmates to Kentucky Correctional Psychiatric Center |
| NTC 13-06-01 | Licensure and Training Standards | NTC 19-01-01 | Inmate Work Program |
| NTC 13-07-01 | Provisions for Health Care Delivery | NTC 19-01-03 | Temporary Leave from Job Assignment |
| NTC 13-08-01 | Medical and Dental Records | NTC 19-02-01 | Correctional Industries |
| NTC 13-09-01 | Special Diets | NTC 19-02-02 | Guidelines for Correctional Industries |
| | | NTC 20-01-01 | Educational Programs |
| | | NTC 20-02-02 | Live Work Projects in Vocational School Classes |
| | | NTC 21-01-01 | Library Services |
| | | NTC 22-03-01 | Conducting Inmate Organizational Meetings and Programs |
| | | NTC 23-01-01 | Religious Services |
| | | NTC 23-03-01 | Marriage of Inmates |
| | | NTC 24-04-01 | Honor Status |
| | | NTC 24-05-01 | Unit Management |
| | | NTC 25-01-01 | Release Preparation Program |
| | | NTC 25-01-02 | Temporary Release/Community Center Release |
| | | NTC 25-01-03 | Graduated Release |
| | | NTC 25-02-01 | Funeral Trips and Bedside Visits |
| | | NTC 25-03-01 | Inmate Release Procedure |
| | | NTC 26-01-01 | Citizen Involvement and Volunteer Services Program |

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 13, 1996

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FILED WITH LRC: February 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 29, 1996, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

JUSTICE CABINET
Department of Corrections
(Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 283 employees of the correctional institutions, 943 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

Section 1. (1)(a) Western Kentucky Correctional Complex policies and procedures, February 13, 1996 [November 14, 1995], are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Western Kentucky Correctional Complex policies and procedures include:

- WKCC 01-02-01 Public Information and Media Communication
WKCC 02-00-03 Invoice and Voucher Processing
WKCC 02-00-04 Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06 Purchasing Procedures
WKCC 02-01-01 Inmate Funds
WKCC 02-01-02 Inmate Canteen
WKCC 02-02-01 Agency Funds and Accounting Procedures
WKCC 02-08-01 Property Receipt and Inventory Procedures
WKCC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01 Employee Training and Development
[~~WKCC 04-04-01 Educational Assistance Program (Deleted 2/13/96)~~]
WKCC 05-01-01 Research, Consultants, and Student Interns
WKCC 06-00-01 Offender Records and Information Access
WKCC 06-00-02 Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01 Drug Abuse and Alcohol Testing (Amended 2/13/96)
WKCC 10-02-01 Special Management Inmates
WKCC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03 Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04 Food Service Security
WKCC 11-00-05 Food Service General Guidelines
WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01 Inmate Clothing
WKCC 13-00-01 Special Health Programs
WKCC 13-01-01 Use of Pharmaceutical Products
WKCC 13-02-01 Health Care Services
WKCC 14-04-01 Legal Services Program
WKCC 14-06-01 Inmate Grievance Procedure
WKCC 15-01-01 Hair and Grooming Standards
WKCC 16-01-01 Visiting Policy and Procedures
WKCC 16-02-01 Inmate Correspondence
WKCC 16-03-01 Inmate Access to Telephones
WKCC 16-04-01 Inmate Packages (Amended 2/13/96)
WKCC 17-01-01 Inmate Personal Property (Amended 2/13/96)

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WKCC 17-02-01 Inmate Reception and Orientation [~~Amended 11/14/95~~]
WKCC 20-01-01 Education Program
WKCC 22-00-01 Inmate Recreation and Leisure Time Activities
WKCC 22-00-02 Inmate Clubs and Organizations
WKCC 23-00-01 Religious Services
WKCC 25-02-01 Inmate Release Process
WKCC 25-03-01 Prerelease Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: February 13, 1996

FILED WITH LRC: February 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for March 22, 1996 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 145 employees of the correctional institutions, 410+ inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

N/A

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

(a) Necessity of proposed administrative regulation if in conflict:

N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate

in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF STATE POLICE (Amendment)

502 KAR 50:010. Admissibility of evidence.

RELATES TO: KRS 16.140

STATUTORY AUTHORITY: KRS 16.140(8)

NECESSITY AND FUNCTION: KRS 16.140 establishes a trial board within the Department of State Police to hear charges against officers. KRS 16.140(8) provides that the commissioner may promulgate reasonable rules and administrative regulations governing the procedure before the trial board. This administrative regulation is necessary to define the standards for the admissibility of evidence in proceedings before the trial board.

Section 1. Presiding Officer. The designated members of the trial board will, prior to the beginning of a trial, select one (1) of its members as the presiding officer. [~~The Commissioner of the Kentucky State Police shall preside over all trial board proceedings and shall rule on all motions and objections.~~] The presiding officer may, if desired [he so desires], have the assistance of counsel in order to rule on evidentiary or procedural matters. [~~If for any reason the commissioner is unable to preside, the members of the trial board shall select one of their number to preside.~~] The [commissioner or other] presiding officer [member] shall not vote or otherwise participate in the trial board's determination of guilt or innocence or in the setting of the punishment, if any.

Section 2. Strict Rules of Evidence Not to Apply. Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky shall be admitted in hearings before the trial board; however, the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by reasonable, prudent men in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded and the presiding officer shall give effect to the rules of privilege recognized by the laws of the Commonwealth of Kentucky.

Section 3. Discovery. Any officer against whom trial board charges have been filed may discover evidence. Discovery may be accomplished by use of the Open Records Law. Requests for documents shall be directed to the official custodian of records for the Kentucky State Police. Accused officers may also request the commissioner or presiding officer issue a subpoena for documents held by the agency that are relevant to an accused officer's defense. Discovery privileges, including the deliberation process and work product rule, shall be observed.

Section 4. Judicial Notice. The presiding officer may take judicial notice of matters of common knowledge that are beyond reasonable dispute, statutes, and official court records.

Section 5. ~~[4.]~~ Interrogation of Witnesses. The rules of law that apply to state court proceedings concerning the manner and scope of examination and cross-examination of witnesses shall apply to trial board proceedings.

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Section 6. [5-] Impeachment of Witnesses. The rules of law concerning the impeachment of witnesses that apply to state court proceedings shall apply to trial board proceedings.

E. DANIEL CHERRY, Commissioner

APPROVED BY AGENCY: January 26, 1996

FILED WITH LRC: January 29, 1996 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ms. Jean Ann Gabbard, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jean Ann Gabbard, Personnel Manager

(1) Type and number of entities affected: All sworn officers of the Department of State Police.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None seen.

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

1. First year following implementation: Minor

2. Second and subsequent years: Minor

(3) Effects on the promulgating administrative body:

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

1. First year: Minor

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

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

(b) Reporting and paperwork requirements:

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

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

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

(b) Kentucky: Not applicable.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None

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

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

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

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

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

(10) Any additional information or comments: This amendment is designed to ensure that the trial board procedures comply with provisions of the Administrative Procedures Act, KRS Chapter 13B.

(11) TIERING: Is tiering applied? No. This administrative regulation applies only to sworn officers of the Department of State Police.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement (Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Parts 40, 382-383, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, Title 49, Code of Federal Regulations, Parts 40, 382-383, 390-397

NECESSITY AND FUNCTION: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

(a) To transport agricultural products from his farm;

(b) To transport farm machinery or farm supplies to his farm; or

(c) Generally thought of as farm machinery; and

(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

Section 2. Governing Federal Regulations. All commercial motor vehicles operated for-hire or in private carriage, interstate or intra-state, except as set forth in Section 3 of this administrative regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) Title 49, Code of Federal Regulations Part 40, Procedures for Transportation Workplace Drug Testing Programs effective as amended through May 22, 1995;

(2) Title 49, Code of Federal Regulations Part 382, Controlled Substances and Alcohol Use and Testing effective as amended through October 23 ~~May 10~~, 1995;

(3) Title 49, Code of Federal Regulations Part 383, Commercial Driver's License Standards; Requirements and Penalties, effective as amended through June 17, 1994;

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(4) Title 49, Code of Federal Regulations Part 390, General, effective as amended through September [June] 27, 1995;

(5) Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through July 28 [March 13], 1995;

(6) Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective as amended through July 28 [January 14], 1995;

(7) Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, effective as amended through October 6 [January 1], 1995;

(8) Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through July 28, 1995 [November 23, 1994];

(9) Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, effective as amended through July 28 [January 2], 1995; and

(10) Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective as amended through July 28 [January 14], 1995.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Part 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(2)(a) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted in this administrative regulation.

(b) In spite of the requirements specified in paragraph (a) of this subsection, any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(c) The operators of the vehicles specified in paragraph (a) of this subsection shall meet the requirements of 49 CFR Part 382 relating to drug and alcohol testing.

(3) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for transporters of hazardous materials under 601 KAR

1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be twenty- one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) ~~Electric~~ Utility motor carriers while operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore electric power.

(7) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(8) Motor carrier vehicles operated exclusively in intrastate commerce may comply with the provisions of 601 KAR 1:160 rather than 49 CFR Part 390.21.

Section 4. Buses. (1) Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" adopted on June 21, 1993 by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2)(a) If a commercial vehicle is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer to conduct a safety inspection of the vehicle shall be cause for the officer to place the vehicle out-of-service until the permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver

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placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

(4) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be inspected, copied or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

Section 7. Persons Allowed to Perform Physical Examinations. Medical examiner is defined in 49 CFR 390.5 as a person who is licensed, certified, and/or registered, in accordance with applicable state laws and administrative regulations, to perform physical examinations. According to Kentucky state law this shall include the following:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Chiropractor licensed by the Kentucky Board of Chiropractic Examiners; and

(5) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: January 18, 1996

FILED WITH LRC: January 23, 1996 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 26, 1996 at 2 p.m. local prevailing time in the Transportation Cabinet, Fourth Floor Hearing Room of the State Office Building, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 21, 1996, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public 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 March 21, 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 March 26, 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

Agency Contact: Sandra G. Pullen

(1) Type and number of entities affected: 30,000 motor carriers

operating in Kentucky; 790,000 commercial trucks operating in Kentucky; and 118,000 commercial drivers licensed 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: N/A

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No public comment hearing was held, but it will be easier for utility companies responding to an emergency to not have to juggle work schedules to keep all drivers in compliance with the hours of service requirements.

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

1. First year following implementation: A change to the federal motor carrier safety regulations requires that reports be maintained on accidents occurring while the motor carrier is operating in intrastate commerce just as is required for carriers operating in interstate commerce. This was a technical change only because the reference to intrastate commerce was inadvertently omitted by the Federal Highway Administration in a previous amendment.

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

(3) Effects on the promulgating administrative body: The only effect on the Transportation Cabinet of this change to the administrative regulation is to the cabinet as a motor carrier rather than as the administrative body. Therefore, this subsection will remain uncompleted.

(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: The Kentucky Road Fund as authorized in the Transportation Cabinet, Department of Vehicle Regulation biennial budget.

(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: There are no alternatives to the federal mandates which were the primary changes to this administrative regulation. The word "electric" was deleted in front of "utilities" at the request of the Motor Carrier Office of the Federal Highway Administration. Mr. Yount with that office pointed out that any utility company may be required to respond to an emergency and need the exemption from the hours of service restrictions. The listing of persons allowed under Kentucky state law to perform employment physicals was spelled out in the administrative regulation to provide public notice. The Division of Driver Licensing had been requested to compile such a list.

(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 amendments to the federal motor carrier safety regulations also included many minor technical amendments to keep the regulations accurate and up

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to date. The requirements on alcohol and drug testing were also expanded to include foreign-based motor carriers and commercial drivers. A more significant change to the federal motor carrier safety regulations was a change requiring the use of automatic brake adjusters on hydraulically-braked commercial motor vehicles and air-braked commercial motor vehicles manufactured on or after October 20, 1993 and October 20, 1994, respectively. This was done to ensure consistency with the federal motor vehicles safety standards relating to the manufacture of motor vehicles which now require the installation of automatic brake adjusters and adjustment indicators on commercial motor vehicles manufactured after these dates.

(11) TIERING: Is tiering applied? Yes. The administrative regulation is tiered in that more stringent safety requirements are imposed on the owners and operators of larger vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 390-399. These federal regulations extensively reference 49 CFR Part 383 relating to the commercial driver's license.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Part 40, Parts 382-383 and 390-397. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 398 relating to the transportation of migrant workers and 49 CFR Part 399 relating to motor carrier employee safety and health standards.

3. Minimum or uniform standards contained in the federal mandate.

(a) Commercial drivers' license standards for the issuance, testing and withdrawal of a CDL;

(b) Establishes 0.4% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;

(c) Establishes the maximum number of hours a commercial driver may be on duty and how he must keep a record of the amount of time he has worked;

(d) Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;

(e) Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;

(f) Defines the parts and accessories necessary for the safe operation of a commercial vehicle;

(g) Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be performed by certified inspectors or mechanics; and

(h) Driving and parking rules while transporting hazardous materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky, with reluctantly given federal approval, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However, the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exemptions.

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. In most instances, the effect will be on the county road or public works.

3. State the aspect or service of local government to which this administrative regulation relates. The local government drivers of the commercial vehicles above 26,000 pounds will have to be drug and alcohol tested on a preemployment, random, post-accident, and for-cause basis. Previously, state and local government drivers were exempt from this requirement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): It will cost local governments approximately \$100 for each drug and alcohol test performed. The cost to each unit of local government depends on the number of commercial drivers it employs.

Other Explanation:

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers Division of Hearings (Amendment)

601 KAR 1:029. Definitions relating to 601 KAR 1:030 through 601 KAR 1:145.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600

NECESSITY AND FUNCTION: To assure uniformity of all terminology in the administrative regulations relating to motor carriers.

Section 1. (1) KRS 281.010-281.014 Adopted. The definitions set forth in KRS 281.010-281.014 shall have the same meaning and effect in the administrative regulations of the Transportation Cabinet which relate to motor carriers: 601 KAR 1:030 through 601 KAR 1:145.

(2) Approval. "Approval" shall mean written approval.

(3) Authorized carrier. "Authorized carrier" shall mean a person duly qualified with the cabinet to engage in the transportation of

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persons or property for hire in either interstate commerce, or intrastate commerce in Kentucky, or both.

(4) Delivery. "Delivery" shall mean handing the legal document or paper to the attorney or to the party; or leaving it at his office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or if the office is closed, or the person to be served has no office, leaving it at his dwelling house or his place of abode with some person of suitable age and discretion then residing therein.

(5) Filing. "Filing" shall mean the receipt of a signed or attested document in the Transportation Cabinet, Division of Hearings, [Office of General Counsel,] at 501 High Street, Frankfort, Kentucky, during regular office hours.

(6) Manifest. "Manifest" shall mean a complete listing of all shipments on a truck. The manifest shall refer to the freight bill of each shipment by individual pro number, and show the weight of each shipment and the origin and destination of each shipment.

(7) Party. "Party" shall mean either an applicant, complainant, respondent, or a person who has filed a protest in accordance with 601 KAR 1:030.

(8) Property. "Property" shall mean general commodities, both hazardous and nonhazardous, excluding household goods and passengers.

(9) Qualified equipment. "Qualified equipment" shall mean a motor vehicle duly and currently registered and licensed for the transportation of persons or property for hire in intrastate commerce in Kentucky by an authorized carrier who may properly conduct such transportation.

(10) ~~(9)~~ Service. "Service" when regarding a legal document or paper shall mean the delivery of a copy to the other party or his attorney, or by mailing it to him at his address of record.

NORRIS BECKLEY, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: January 11, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 26, 1996 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 21, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 21, 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 March 26, 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 motor carriers operating in the Commonwealth of Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: None

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings:

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: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: It was decided to add a definition of "property" since because of changes in federal law many of the other regulations now refer specifically to property.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a definitions only administrative regulation.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Hearings (Amendment)

601 KAR 1:030. Hearings.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600, 49 USC 11501

NECESSITY AND FUNCTION: KRS Chapter 281 provides in part that hearings be held on applications for authority to operate motor carriers in the Commonwealth. Federal law 49 USC 11501 restricts states' authority to only those intrastate transporters of passengers or household goods. This administrative regulation establishes guidelines for conducting the required hearings.

Section 1. (1) Application to be heard together. Applications shall be set for a hearing at the earliest statutorily-permissible date convenient to the department. If more than one (1) application has been filed seeking a certificate or permit to provide transportation services over the same route or any part thereof, or if one (1) or more than one (1) application seeking the same or similar authority, has

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been filed prior to the issuance of notices of a hearing on any of the applications, then, a consolidated hearing shall be called on all these applications. Any similar application filed after hearing notices have been issued but prior to the date of the hearing may, in the commissioner's discretion, be considered at a consolidated hearing or may be heard independently at a time set by the department.

(2) Road conditions. Upon the filing of an application for a certificate or permit authorizing operations over any highway which has not at the time of the application been opened for use by the general traveling public the department may, within its discretion, refuse to call a hearing upon the application until the highway in question is open for traffic or shall be opened for traffic within sixty (60) days. If a hearing is called on an application, and it is determined at the hearing that the highway is not open for traffic and will not be opened for traffic within sixty (60) days of the date of the hearing, the department may proceed with the hearing or may dismiss the hearing with the provision that a hearing de novo will be called when it is determined that the road is open for traffic or will be opened for traffic within sixty (60) days.

Section 2. Notice by Department Regarding Application to Transport Household Goods or Passengers. (1) The department shall give a minimum of thirty (30) days' written notice of all hearings to all known, required and interested parties. The notice shall state the time and place the hearing will be held, fully describing the matter to be heard, shall contain the name and address of the party initiating or involved in the matter to be heard, and the docket number assigned to the matter by the department. The notice shall state that anyone having an interest in the matter may file a protest or other proper pleading in accordance with the requirements of the administrative regulations of the department.

(2) At a minimum when an application for a particular type of authority is received by the department, the department shall send a notice of hearing to all holders of certificates or permits granting the same or similar authority and other applicants for the same or similar authority. If the authority sought is that listed below in the first column, then the department shall send notice to the authority holders or applicants for authority listed in the second column:

(a) Airport shuttle service - all airport shuttle services, ~~charter buses,~~ limousines, and taxicabs operating in the city ~~county~~ for which authority is sought;

(b) Bus whether common carrier, suburban, city, industrial, charter, or nonprofit - all taxicabs and limousines with a situs in the proposed bus service area and all buses in the state;

(c) Common carrier limousine - all airport shuttle services, charter buses, limousines and taxicabs in the city ~~county~~ for which the certificate is sought and all limousines with operating authority in cities of counties which are contiguous to that in which the authority is sought;

(d) Common carrier taxicab - all airport shuttle services, ~~charter buses,~~ limousines and taxicabs with operating authority in the city ~~county~~ for which the certificate is sought;

(e) ~~Regular and irregular route common carriers—all common carrier trucks, contract truck carriers, local cartage carriers, and parcel delivery carriers;~~

~~(f) Contract truck carrier—all local cartage carriers, common carriers, contract truck carriers and parcel delivery carriers;~~

~~(g) Household goods carrier - all household goods[-local cartage and common] carriers[-~~

~~(h) Local cartage carrier—all local cartage carriers, household goods carriers, parcel delivery carriers and common carriers;~~

~~(i) Mobile home mover—all mobile home movers; and~~

~~(j) Parcel delivery carrier—all parcel delivery carriers, local cartage carriers and common carriers].~~

Section 3. Notice by Applicant. (1) A passenger or household goods carrier, other than a city bus operator, which ~~who~~ proposes

a change in route or an abandonment of any route shall:

(a) Give detailed notice of its proposed action to all competing and connecting carriers;

(b) Publish once a week for three (3) consecutive weeks ~~[-and shall cause] an advertisement [to be published] in a sufficient number of newspapers of general circulation to cover the territory affected by the change sought[-this advertisement to be published once a week for three (3) consecutive weeks].~~

(2) The advertisements required in subsection (1) of of this section shall clearly indicate the following:

(a) The proposed change;

(b) The proposed effective date of the change; and

(c) ~~shall state~~ That any person desiring to protest may do so by filing a protest with the department ~~[-The protest shall be filed] in accordance with the administrative regulations of the department.~~

(3) The first required notice shall be published on or before the date on which the application is filed with the department;

(4) ~~and~~ The second and third required notice shall be published during the next two (2) succeeding calendar weeks.

(5)(a) Not later than ten (10) days subsequent to the third publication of the advertisement, the applicant shall file with the department an affidavit, in duplicate, to the effect that the required notice has been given.

(b) The affidavit shall be accompanied by a copy or copies of the advertisements.

Section 4. Protests and Other Pleadings. (1) General.

(a) All protests, pleadings, motions and other papers shall be filed with the department in duplicate and shall be typewritten and double-spaced on white eight and one-half (8 1/2) inches by eleven (11) inches paper, properly styled with the matter to which they are relative, and the docket number assigned thereto by the department, if any.

(b) Any protests, pleadings, motions, or other papers may be printed and, if printed, need not be double-spaced.

(c) Pleadings, protests, motions, or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(d) Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit.

(e) The attorney's signature shall constitute a certification that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay.

(f) If the matter is not signed or is signed with the intent to defeat the purpose of this administrative regulation, it may be stricken as sham and false, and the matter may proceed as though there had been no filing.

(g) All protests shall state the ground of the protest and the reasons therefor.

(h) That which is not filed in conformance with the requirements of this subsection ~~herewith~~ shall not be considered or accepted as a matter of record.

(2) Filing. The date and time of filing a protest or any other papers with the Division of Hearings ~~Office of General Counsel~~ shall be indicated thereon by the department. If the date on which any protests, pleadings, motions or other papers shall be filed is Saturday, Sunday, or a legal holiday, the date for filing shall be the close of the next regular business day of the department.

(3) Time of filing. All protests shall be filed with the department at least ten (10) days before the date set for the hearing in the matter except:

(a) A protest to a time schedule change shall be filed not later than five (5) days before the effective date of the proposed time schedule change;

(b) A protest to a proposed change in the existing tariff of carriers of household goods ~~property~~ shall be filed not later than fifteen (15)

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days after the proposed tariff change is filed with the department;

(c) A protest to a proposed change in existing fares of carriers of passengers shall be filed at least ten (10) days before the proposed effective date of the proposed change.

(4) Service of pleadings and other papers. Any person who files a protest, pleading, complaint or other paper, shall serve a copy thereof upon the applicant, respondent, or initiating party and shall certify to the department that the service has been accomplished.

(5) Withdrawal. Any person who desires to withdraw an application, protest, pleading or other paper may do so upon written notice to the department and to the interested parties as soon as possible. A notice of withdrawal shall be in conformance with the requirements of this administrative regulation.

(6) Replies to protests. If a protest to a proposed change in the existing tariff of a carrier of property is filed, the carrier requesting the proposed change may file a reply to the protest within ten (10) days of the filing of the protest.

(7) If no protests or other pleadings are filed within the time prescribed, the department may determine the case on the basis of affidavits. The procedure to be followed is set forth in 601 KAR 1:031.

Section 5. Continuances. (1) All hearings shall be held on the day set by the notice issued by the department. A change in the hearing date shall not be made ~~(No change will be made in a hearing date)~~ except:

(a) Upon agreement of all interested parties with approval of the department; or

(b) Upon order of the department for any reasons deemed necessary or advisable.

(2) If the continuance is granted prior to the expiration of the protest period, thirty (30) days' notice shall be given of any hearings which may thereafter be called in the matter, and further protests shall be allowed to be filed in accordance with the requirements of this administrative regulation. If the continuance is granted after the expiration of the protest period, the hearing may be reset at any time provided that not less than ten (10) days' notice of the hearing be given, and no further protests shall be received.

Section 6. General Practice. (1) Appearances. If an appearance by an applicant is not made at a hearing on the application, the application may be denied or dismissed, and if it is denied or dismissed, a similar application by the same applicant shall not be entertained until six (6) months have elapsed. If a protestant does not appear in person or by legal counsel at the hearing on the matter in which the protest is filed, the protest shall not be considered as a part of the record.

(2) Adjournment. The hearing may be adjourned to a future day for just cause shown, or with consent of the parties, or by the examiner on his own motion and order.

(3) Service on attorney. When a party has appeared by an attorney, all communications, notices, pleadings, etc., shall be sent to the attorney. Service on the attorney shall be considered as service on the party. The department shall be notified of any change in attorney.

(4) Proof. Evidence at all hearings shall be by oral testimony, except upon special permission of the examiner designated by the department to hold the hearing.

(5) Prepared statements. Prepared statements may be received in evidence, but copies thereof shall have been furnished the hearing examiner, reporter, and all parties a reasonable time before their receipt into evidence, so that any objections may be made before the statements are made a part of the record.

(6) Exhibits. All exhibits filed during a hearing shall be filed in duplicate and a copy thereof shall be furnished to each party, unless otherwise ordered by the hearing examiner.

(7) Stipulations. Parties to any proceeding before the department, may, by stipulation entered in the record, agree upon the facts therein

or any portion thereof. It is desirable that facts be thus agreed upon whenever practicable. Those stipulations shall not be binding on the department, nor upon the parties who are not parties to the stipulation, and the examiner may require additional evidence if he deems it necessary.

(8) Qualification of witnesses. Witnesses shall not be permitted to give opinion evidence unless they have first qualified to show that their special familiarity and knowledge with the subject entitles them to express an opinion which will be helpful to the department.

(9) Evidence. Any evidence which would be admissible under the statutes of the State of Kentucky, and under rules of evidence followed by the circuit courts of the State of Kentucky, shall be generally admitted by the examiner in hearings before the department. However, subject to the discretion of the examiner, information may be admitted that may be of assistance in determining the rights of the parties.

(10) Transcript.

(a) The examiner holding a hearing may, in any case, in his discretion, order the taking of a transcript of the hearing.

(b) If a case is ~~(Should a case be)~~ protested or contested in any manner, a transcript of the testimony, exhibits, statements and arguments shall be made.

(c) When a transcript is ordered by the examiner or is required by this administrative regulation, it shall be the duty of the party instituting the proceeding to provide the stenographic reporter for its transcription.

(d) If the party instituting the proceeding fails to provide a reporter or if a substitute reporter cannot be provided within one (1) hour of the time scheduled for the hearing, the hearing examiner may dismiss the proceeding.

(e) The reporter shall furnish an original of the transcript to the department.

(f) All transcripts shall be indexed to show the location of the testimony of each witness and all exhibits.

(g) The cost of transcribing the evidence and of furnishing an original of the transcript to the department shall be borne by the parties to the hearing and shall be prorated between or among them, on the basis of testimony, cross-examination, and statements put in the record by each party.

(h) Additional copies of the transcript may be purchased from the reporter at the entire cost of the party desiring same. The department shall not issue a recommendation or final order until the original of the transcription of all hearings have been received in the Division of Hearings ~~(Office of General Counsel)~~.

(11) Exclusion of witnesses. Upon request of a party or on the examiner's own motion, witnesses may be ordered excluded from the hearing room. Principals including owners, officers, partners, or directors may remain in the hearing room subject to the approval of the hearing examiner.

(12) Briefs. The department may receive briefs, if a party desires to submit one (1) and is allowed to do so by the examiner, or the examiner may require the filing of briefs, which briefs when submitted may be answered by the opposition and shall be considered in the determination of the matter. The time for filing of the briefs and replies shall be set by the examiner at the close of the hearing.

(13) When matter may be reopened. In addition to the provisions of KRS 281.775 any matter may be reopened at any time by the department if it is found that fraud, or any act, or omission of an act, amounting to a fraud, has been perpetrated; or if it appears that the laws and administrative regulations were not complied with by any party or by the department, and if it appears that the rights of any person have been prejudiced thereby.

(14) Subpoenas. Any applicant, protestant, or other party, who desires to summon and compel the attendance at any hearing of any witness or witnesses, or who desires the production in evidence of any books, records, papers, etc., may procure the issuance of a subpoena or a subpoena duces tecum or orders of personal atten-

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dance by application to the hearings clerk of the Division of Hearings [~~Office of General Counsel~~] unless the hearing in connection with which the subpoena or subpoena duces tecum or order of personal attendance is sought is in progress, in which case application shall be made to the examiner conducting the hearing. Applications for subpoenas or subpoena duces tecum or orders of personal attendance shall be made in the manner provided by the appropriate sections of the Kentucky Rules of Civil Procedure, and upon their issuance shall be served as provided in Rule 45.03 of the Kentucky Rules of Civil Procedure. Cost of service shall be paid by the party at whose instance the issuance was made. However, it shall be the duty of the person desiring the attendance of a witness to see that the witness is present at the time and place of the hearing; the failure of the witness to appear, whether subpoenaed or not shall not constitute grounds for the continuance of the hearing.

(15) Affidavits. When affidavits relative to the character of persons are required to be filed with an application, the affidavits shall be from reputable persons who have known the applicant for a sufficient length of time to become reasonably acquainted with the applicant's character, both moral and professional.

(16) Restrictive amendments. An applicant may offer a restrictive amendment which is reasonable, enforceable and consistent with the public interest prior to, during or after any hearing held on its application. The restrictive amendment shall be in writing meeting the requirements of Section 4 of this administrative regulation or be given before a stenographic reporter who shall provide a transcribed copy of the proposed restrictive amendment to the department. Acceptance of a restrictive amendment shall be by the commissioner of the department or a properly designated representative of the commissioner. The department reserves the right to reject any restrictive amendment, notwithstanding any prior acceptance, that would be unreasonable, adverse to the public interest, would be unenforceable, would make no difference in the application or would otherwise adversely affect the administration of the motor carrier laws. The department shall provide a copy of an order accepting or denying a restrictive amendment request to the applicant, protestants and other parties to the proceedings.

Section 7. Report and Recommended Order. (1) Upon the conclusion of a hearing, the examiner shall make a report and recommended order which shall contain findings of fact and conclusions of law together with recommended grant or denial or partial grant or denial of authority, rates, fares or changes of time schedules, when necessary.

(2) The report and recommended order shall be issued within ninety (90) days of receipt of all transcripts, documents, or evidence upon which the hearing examiner is to base his opinion.

(3) Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 8. Exceptions and Replies Thereto. (1) Any party to a hearing may, within twenty (20) days after the date of the report and recommended order, file and serve his exceptions to the report and recommended order [there].

(2) The exceptions shall conform to the requirements of this administrative regulation.

(3) Exceptions shall consist of as many objections to the whole or any part of the report as the party filing the exception desires to make, with each objection numbered.

(4) Each objection shall fully state the nature thereof and the grounds therefor.

(5) Parties filing exceptions shall serve a copy thereof upon every other party participating in the hearing, and shall certify to the department that this service has been accomplished.

(6) Replies to exceptions shall be filed within twenty (20) days after service of the exceptions, if any party desires to make a reply.

(a) The reply shall conform to the requirements of this administra-

tive regulation.

(b) The reply shall consist of a separate reply to each objection set out in the exception.

(c) Any party filing a reply shall serve a copy thereof on every other party participating in the hearing and shall certify to the department that this service has been accomplished.

Section 9. Final Order. (1) Upon the filing of the exceptions and replies thereto or upon expiration of the time for filing of same, the examiner shall render the complete record to the commissioner or assistant commissioner, who shall consider and pass upon the case.

(2) The commissioner or assistant commissioner may, after a study of the case, refer it back to the examiner and request the taking of more proof on any point in issue.

(3) The commissioner or assistant commissioner may require oral argument of the case.

(4) When passed upon by the commissioner, or when passed upon by the assistant commissioner and approved by the commissioner, the decision shall be served by mail upon all parties and shall be a final order of the department. The final order shall contain the date of its rendition.

(5) At the time a certificate is granted, the final order granting it may approve a time schedule and a schedule of rates, fares and charges filed by the applicant or a time schedule or a schedule of rates, fares, and charges determined by the department which, when approved, shall be at the time schedule and the schedule of rates, fares and charges upon which the carrier shall operate until the department has approved a change or modification thereof.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: January 11, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 26, 1996 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 21, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 21, 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 March 26, 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 intrastate motor carriers of passengers or household goods.

(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, as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the

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administrative regulation will be implemented, to the extent available from the public comments received: None, as a result of changes to this administrative regulation.

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

1. First year following implementation: None, as a result of the changes to this administrative regulations.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fewer hearings will be held, but that is because of the federal mandate. This will allow the cabinet to proceed with the administrative hearings which had been delayed for a while.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None as a result of the changes to this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as appropriated to the Department of Vehicle 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: Not applicable.

(b) Kentucky: The economic effect on the freight transportation industry will result from the federal mandate not the changes to this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. Kentucky can no longer continue to require economic regulation hearings for transporters of freight.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Much of KRS Chapter 281 is in conflict.

(a) Necessity of proposed regulation if in conflict: The federal mandate in 49 USC 11501 overrides the state statutes.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Kentucky has continued the economic regulation of all intrastate motor carriers not preempted by the federal mandate.

(10) Any additional information or comments: legislation to amend KRS Chapter 281 is being sought by the Transportation Cabinet.

(11) TIERING: Is tiering applied? No. The administrative hearing procedure must be the same for all.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 USC 11501

2. State compliance standards. Kentucky will no longer hold hearings on the economic regulation of the intrastate movement of freight by motor carriers.

3. Minimum or uniform standards contained in the federal mandate. No state may economically regulate the intrastate movement of freight.

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.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Hearings (Amendment)

601 KAR 1:031. Procedure when no protest to notice of hearing is filed.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.801, 49 USC 11501

NECESSITY AND FUNCTION: KRS 281.801 allows affidavits to be filed in lieu of holding a formal hearing on an application when no protests on the application are received within the time prescribed by 601 KAR 1:030. This administrative regulation sets forth the procedures to be followed by both the applicant and the Transportation Cabinet when affidavits are to be filed which present the testimony of the applicant and the applicant's witnesses.

Section 1. If an application for motor carrier authority or a change to motor carrier authority has been set for hearing by the Transportation Cabinet and no protest is filed in accordance with 601 KAR 1:030, the cabinet may cancel the hearing. In this case the cabinet shall by order of the hearings clerk cancel the hearing and require that the applicant submit evidence by affidavit showing that there is a need for the service and that it is fit, willing and able to perform this service.

Section 2. The order of the hearings clerk shall set the date no sooner than thirty (30) days from the date of the order that the affidavits shall be filed with the Division of Hearings [~~Office of General Counsel~~]. If the applicant fails to file the affidavits within the thirty (30) days or fails to show good cause why the time should be extended, he shall be deemed in default and the application may be dismissed by the Commissioner of the Department of Vehicle Regulation.

Section 3. Style of Affidavit. The supporting statements filed by and on behalf of the applicant shall collectively contain at least the following information:

(1) Name and address of the motor carrier who has filed the application for authority;

(2) Statement of character and reputation of the applicant and a brief history of the applicant's prior work history, including any experience in providing transportation services;

(3) Statement whether household goods [~~Description of the specific commodity~~] or passengers are to be transported;

(4) [~~Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;~~]

(5) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past; and

(5) [(6)] A recital of the consequences if this transportation service is not made available.

Section 4. Upon receipt of the affidavits the hearing examiner shall make a report and recommended order which shall contain findings of fact and conclusions of law together with recommended grant or denial or partial grant or denial of authority, rates, fares or changes of time schedules, when necessary. Copies of the report and recommended order shall be served upon each of the parties to the

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matter heard.

Section 5. After the report and recommended order is filed the matter shall proceed as set forth in 601 KAR 1:030 and KRS 281.625.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: January 11, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 26, 1996 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 21, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 21, 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 March 26, 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 intrastate motor carriers of passengers or household goods.

(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, as a result of the changes to this administrative regulation.

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

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

1. First year following implementation: None, as a result of the changes to this administrative regulations.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fewer hearings will be held, but that is because of the federal mandate. This will allow the cabinet to proceed with the administrative hearings which had been delayed for a while.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None as a result of the changes to this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as appropriated to the Department of Vehicle 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: Not applicable.

(b) Kentucky: The economic effect on the freight transportation industry will result from the federal mandate not the changes to this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. Kentucky can no longer continue to require economic regulation hearings for transporters of freight.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Much of KRS Chapter 281 is in conflict.

(a) Necessity of proposed regulation if in conflict: The federal mandate in 49 USC 11501 overrides the state statutes.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Kentucky has continued the economic regulation of all intrastate motor carriers not preempted by the federal mandate.

(10) Any additional information or comments: legislation to amend KRS Chapter 281 is being sought by the Transportation Cabinet.

(11) TIERING: Is tiering applied? No. The administrative hearing procedure must be the same for all.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers Division of Hearings (Amendment)

601 KAR 1:040. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission.

RELATES TO: KRS Chapter 281, 49 CFR Part 1023

STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 1023, 49 USC 11501

NECESSITY AND FUNCTION: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of interstate motor carriers operating in Kentucky pursuant to authority granted by the Interstate Commerce Commission.

Section 1. Kentucky Intrastate Passenger or Household Goods Authority. (1)(a) All applications for operating authority to engage in Kentucky intrastate commerce relating to the transportation of persons or household goods shall be made on the form, "Application for Operating Authority" form TC 93-13 effective October, 1994 [~~April, 1993~~]. This form is incorporated by reference as a part of this administrative regulation.

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

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(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(c) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A hearing shall not be called or authority issued upon an incomplete application.

(5) The form TC 93-13 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Division of Hearings [~~Office of General Counsel~~], State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548.

Section 2. Temporary Authority Applications. (1)(a) Applications for temporary authority shall be made to the department by petition filed in duplicate.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated.

(d)1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may submit a waiver from each carrier authorized to serve the area sought or any part thereof by filing a letter from each of the carrier waiving any objection to the temporary grant of authority.

(2) If the application is for authority as a contract bus carrier, there shall also be filed with the petition verified statements from a supporting passenger [~~shipper or shippers~~]. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

~~(d) [Description of the specific commodity or passengers to be transported;~~

~~(e) Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;~~

~~(f) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;~~

~~(g) [(g)] How soon the transportation service is needed and the reasons for the time limit;~~

~~(h) [(h)] How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;~~

~~(i) [(i)] Statement of the consequences if this transportation service is not made available and the circumstances which create an immediate and urgent need for the requested service; and~~

~~(j) [(j)] Whether efforts have been made to obtain the service~~

from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed above if one (1) of the following conditions exists:

(a) There are no existing carriers with authority within the scope and area of the application;

(b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) There are unusual and emergency conditions; or

(d) The application is for temporary approval under KRS 281.632(2).

(4) If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1) All applications for approval to transfer a certificate or permit issued by the Department of Vehicle Regulation authorizing Kentucky intrastate commerce shall be accompanied by a filing fee of twenty-five (25) dollars. The application shall be made on "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective October, 1994 [~~April, 1993~~]. This form is incorporated by reference as a part of this administrative regulation. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010. All applications shall be sworn to by the applicant or a responsible official acting for the applicant. A hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

(6) The form TC 93-17 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Division of Hearings, [~~Office of General Counsel~~], State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548.

Section 4. Interstate Operating Authority - Exempt, For-hire. (1)(a) All for-hire motor carriers transporting commodities that have been exempted from the authority requirements of the Interstate Commerce Commission or are performing transportation functions that are exempt from the authority of the Interstate Commerce Commission shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate authorizing this interstate exempt transportation.

(b) All applications for this certificate shall be made on the form, TC 95-12, as revised January, 1995, [effective August, 1993, "FORM A-"] Uniform Application for Registration by ICC [ef] Motor Carriers

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Exempt from ICC Regulations".

(c) The application shall be accompanied by:

1. A twenty-five (25) dollar filing fee; and
2. A statement of reasons the transportation activities are exempted from federal regulation.

(2)(a) All applications and exhibits shall be typewritten or printed legibly in ink.

(b) Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(c) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.

(3) If the motor carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate restricted to the federally exempted activities as may be appropriate.

(4)(a) When the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.

(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.

(5) The form TC 95-12 may be obtained free of charge from the Transportation Cabinet's Department of Vehicle Regulation, Division of Motor Carriers located on the third floor of the State Office Building, 501 High Street, Frankfort, Kentucky. Their mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-4540.

Section 5. Interstate Operating Authority - For-hire Motor Carriers Authorized by the Interstate Commerce Commission. (1) 49 CFR Part 1023 as effective May 18, 1993 shall govern the registration of the for-hire motor carriers which meet the following criteria:

(a) Those whose principal place of business is Kentucky; and

(b) Those which are operating in interstate commerce pursuant to authority granted by the Interstate Commerce Commission.

(2) The "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of for-hire motor carriers operating pursuant to authority granted by the Interstate Commerce Commission.

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 CFR Part 1023.

(4) The Kentucky fee for the issuance of the registration receipt required by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

(5) The "Procedure Manual for the Single State Registration System" is incorporated by reference as a part of this administrative regulation. A copy of it may be viewed or copied at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

Section 6. Contract Bus Carrier Permit; Intrastate. (1) All applications for operating authority to engage in intrastate commerce as a contract carrier shall be made on the form incorporated by reference in Section 1 of this administrative regulation and be in conformity with this administrative regulation and 601 KAR 1:045.

(2) Each application shall include:

(a) A filing fee of twenty-five (25) dollars; and

(b) Two (2) copies of the contract under which the applicant desires to operate.

(3) The contracts shall be executed by the applicant/buyer and

seller or applicant and passenger [shipper], and shall set out:

(a) The rates applicable;

(b) The extent and scope of the activity covered by the contract; and

(c) The minimum number of persons to be transported [amount of freight to be shipped].

(4) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(5) At least one (1) of the contract copies shall have original signatures.

(6) The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department; and

(b) Made a part of the permit;~~and~~

~~(c) Briefly set out on the vehicle identification card carried in the vehicle operated by the contract carrier.~~

(7)(a) When the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.

(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.

Section 7. Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICC. All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property ~~[or passengers]~~ in intrastate commerce, by an applicant who is a single state operator but also desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority.

Section 8. Administrative Regulations Repeal. (1) 601 KAR 1:085, Annual reports, is hereby repealed.

(2) 601 KAR 1:090, Exempted commodities, is hereby repealed.

(3) 601 KAR 1:105, Off-route points and alternate routes, is hereby repealed.

(4) 601 KAR 1:170, Transportation of financial documents, is hereby repealed. ~~{(4) An applicant who only wants to transport exempt commodities pursuant to 601 KAR 1:090 or KRS 281.625 shall apply on form TC 95-14, "Application for Kentucky Irregular Route Truck Certificate, Intrastate Authority Exempt Commodities" last revised in August, 1993.~~

(2) The form TC 95-14 is incorporated by reference as a part of this administrative regulation. A copy of it may be viewed, copied, or obtained at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

NORRIS BECKLEY, Commissioner

FRED N. MUDGE, Secretary

APPROVED BY AGENCY: January 11, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 26, 1996 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by March 21, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which

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the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 21, 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 March 26, 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 intrastate motor carriers of passengers or household goods.

(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, as a result of the changes to this administrative regulation.

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

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

1. First year following implementation: None, as a result of the changes to this administrative regulations. However, because of the federal mandate, freight transporters will no longer be required to file annual reports and the cabinet is removing the requirement for all of the motor carriers which are still economically regulated.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Fewer applications will be received under this administrative regulation, but that is because of the federal mandate. There will still be requirements relating to insurance and safety for the motor carriers no longer economically regulated.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The cabinet will no longer receive, review, and store annual reports for the motor carrier industry.

(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 appropriated to the Department of Vehicle 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: Not applicable.

(b) Kentucky: The economic effect on the freight transportation industry will result from the federal mandate not the changes to this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. Kentucky can no longer continue to require economic regulation for intrastate transporters of freight. Since the majority of the useful annual reports were filed by these motor carriers, the cabinet decided not to continue requiring the less useful annual reports.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Much of KRS Chapter 281 is in conflict.

(a) Necessity of proposed regulation if in conflict: The federal mandate in 49 USC 11501 overrides the state statutes.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Kentucky has continued the economic regulation of all intrastate motor carriers not preempted by the federal mandate.

(10) Any additional information or comments: legislation to amend KRS Chapter 281 is being sought by the Transportation Cabinet.

(11) TIERING: Is tiering applied? No. The administrative hearing procedure must be the same for all.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of District Support Services (Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

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;

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(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.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

WILMER S. CODY, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 13, 1996

FILED WITH LRC: February 14, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 1996, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be

made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Kevin Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Randy Kimbrough, Deputy Commissioner, Management Support Services

(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

(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.

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LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health (Amendment)

803 KAR 2:317. Special industries. [Adoption of 29 CFR Part 1910.261-.275.]

RELATES TO: KRS [Chapter] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules and] administrative regulations [and standards]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. 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.

(b) 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.

(c) 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.

[(2) The amendment to 29 CFR 1910.265(d)(2)(iv)(e), "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 197, 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 126, 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. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: February 8, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 26, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

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 corrects and amends the regulation in response to questions raised to the Occupational Safety and Health Administration (OSHA) about certain provisions in the rule and clarifies language with regard to intent. The provisions covered address: cut resistant

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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. This proposed change also reformats 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: OSHA lists no costs attributed to this proposed change.

(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: These changes in the regulation 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. 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 employ-

ees) 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.

LABOR CABINET

Department of Workplace Standards Kentucky Occupational Safety and Health (Amendment)

803 KAR 2:404. Personal protective and life saving equipment. [~~Adoption of 29 CFR Part 1926.100-.107.~~]

RELATES TO: KRS [~~Chapter~~] 338.051, 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [~~rules,~~] administrative regulations[~~and standards~~]. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

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Section 1. Table E-4 Respirator Protection Factors. [~~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) The Table E-4 Respirator Protection factors found in Section 2 shall apply in lieu of Table E-4 found in 29 CFR 1926.103. [~~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) Table E-4 Respiratory Protection Factors.

Respirator Protection Factors^a

<u>Type of Respirator</u>	<u>Respirator Protection Factor^a</u>		<u>Respirator Protection Factor</u>	
	<u>Permitted for Use in Oxygen-deficient Atmosphere</u>	<u>Permitted for Use in Immediately-dangerous-to-life-or-health Atmosphere^l</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, whichever 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,^{l,j} whichever is less.</u>
<u>Combination particulate-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, whichever 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,^{l,j} 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,^{l,j} whichever is less.</u>
<u>Combination particulate-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 cartridge or canister for vapor or gas, whichever is less.</u>
<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>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>

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<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^l 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^l, whichever is less.</u>	<u>N/A</u>
<u>Airline, demand, quarter-mask or half-mask facepiece, with or without escape provisions^{c,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>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^c</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^{c,e}</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, or suit, with escape provisions^e</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 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)</u>

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values.

Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask face-piece^c

Yes^f

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^c

Yes^f

(Yes, if respirator is used for mine rescue and mine recovery operations.)

No

(yes, if respirator is used for mine rescue and mine recovery operations.)

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.

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^c

Yes^g

Yes

N/A

No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.

N/A

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.

^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 classified for use in atmospheres having unknown concentrations of contaminants.

ⁱ 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.

^j 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.

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[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) 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) 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) 29 CFR 1926.99, "(Reserved)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference-

(6) 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:

**Table E-4
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 person with maximum of 100.
Vapor or gas removing, quarter mask or half mask facepiece ^a	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever ever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, ^h whichever is less.
Combination particulate filter and vapor or gas removing, quarter mask or half mask facepiece ^{b,c}	No	No	10, or maximum use limit or cartridge or canister for vapor or gas, whichever ever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, ^h whichever is less.
Particulate filter, full facepiece ^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 facepiece	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 ^h , whichever is less.
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	No	No	N/A	N/A

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late filter, any respiratory inlet covering ^{b,c,d}		(yes, if escape provisions are provided ^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	N/A N/A	
		(yes, if escape provisions are provided ^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	N/A N/A	
		(yes, if escape provisions are provided ^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 ^f	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 ^f	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 ^a	Yes ^f	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 ^g	Yes	N/A	N/A
				No tests are required due to positive pressure operation of respirator. The maximum protection factors is 10000 plus ^h .
Airline, continuous flow, helmet, hood, suit without escape provisions	Yes ^f	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 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 ^a	Yes ^g	Yes	N/A	N/A
				No tests are required due to positive pressure operation of respirator. The maximum protection factor is 10000 plus ^h .
Hose mask, with or without blower, full	Yes ^f	No	10	As measured on each person, but limited to the

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facepiece _____ use of the respirator in
 _____ concentrations of con-
 _____ taminants below the
 _____ immediately dangerous-
 _____ to life or health (IDLH)
 _____ values.

Self contained _____ Yes[†] _____ No _____ 10 _____ As measured on each
 breathing apparatus, _____ person, but limited to the
 demand type open _____ use of the respirator in
 circuit or negative _____ concentrations of con-
 pressure type _____ taminants below the
 closed circuit, _____ immediately dangerous-
 quarter mask or _____ to life or health (IDLH)
 half mask face _____ values.
 piece* _____

Self contained _____ Yes[†] _____ No _____ 100 _____ As measured on each
 breathing apparatus, _____ (Yes, if respir _____ (yes, if respirator _____ person, but limited to the
 demand type open _____ ator is used for _____ is used for mine _____ use of the respirator in
 circuit or negative _____ mine rescue and _____ rescue and mine _____ concentrations of con-
 pressure type _____ mine recovery _____ recovery operations.) _____ taminants below the
 closed circuit, full _____ operations.) _____ immediately dangerous-
 face piece or mouth _____ to life or health (IDLH)
 piece/nose clamp* _____ values except when the
 _____ respirator is used for mine
 _____ rescue and mine recovery
 _____ operations.

Self contained _____ Yes* _____ Yes _____ N/A _____ N/A
 breathing apparatus, _____ No tests are required due to positive pressure
 pressure demand type _____ operation of respirator. The maximum protection
 open circuit or positive _____ factor is 10000 plus.
 pressure type closed-
 circuit, quarter mask
 or half mask facepiece,
 full facepiece, or mouth-
 piece/nose clamp*

Combination respira _____ The type and mode of operation having the lowest respirator protection factor shall be
 tors not listed. _____ applied to the combination respirator.

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.

^bWhen 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).

*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.

^dIf 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.

[†]"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.

⁹"Oxygen deficiency — immediately dangerous to life or health" — an atmosphere which causes an oxygen partial pressure of 100

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millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

^hThe 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.

ⁱThe 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.

^lVapor 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. Incorporation by Reference. [Public Notice.] (1) The material in paragraphs (a) and (b) of this subsection, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, revised as of July 1, 1994, is incorporated by reference. [In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

(a) 29 CFR 1926.95 to 29 CFR 1926.103(b)(2), excluding Table E-4 - Selection of Respirators:

(b) 29 CFR 1926.103(c) through 29 CFR 1926.107.

(2) "Table E-4 Respiratory Protection Factors", listing the types of respirators required for protection in dangerous atmospheres, found in Section 1(2) of this administrative regulation shall apply in lieu of "Table E-4 Selection of Respirators" found in 29 CFR 1926.103(b)(3).

(3) 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.

(4) The withdrawal of the revision to 29 CFR 1926.104, "Safety Belts, Lifelines, and Lanyards", as published in the Federal Register, Volume 60, Number 148, August 2, 1995, is incorporated by reference.

(5) 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.

(6) The withdrawal of the revision to 29 CFR 1926.105, "Safety Nets", as published in the Federal Register, Volume 60, Number 148, August 2, 1995, is incorporated by reference.

(7) 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.

(8) The withdrawal of the revision to 29 CFR 1926.107, "Definitions Applicable to this Subpart", as published in the Federal Register, Volume 60, Number 148, August 2, 1995, is incorporated by reference.

(9) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601, during the hours of 8 a.m. - 4:30 p.m.(ET),

Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: February 8, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 26, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

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: The Occupational Safety and Health Administration (OSHA) lists 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 no 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 effect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promul-

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gating 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. 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 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.

LABOR CABINET

Department of Workplace Standards Kentucky Occupational Safety and Health (Amendment)

803 KAR 2:412. Fall protection. [~~Adoption of 29 CFR Part 1926.500-503.~~]

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~rules and~~ administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [~~The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.~~]

Section 1. 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 Services, General Services Administration. These standards are hereby incorporated by reference.~~]

(1) The material in paragraphs (a) through (e) of this subsection, and 29 CFR Part 1926.500-502, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, are hereby 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

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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.

~~(b) 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.~~

~~(2) 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 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)(6), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: February 8, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 26, 1996, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

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: The Occupational Safety and Health Administration (OSHA) lists no costs or savings to those affected by these proposed amendments. This proposed regulation 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 no 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. 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

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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 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 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.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (Amendment)

806 KAR 3:160. Life and health reinsurance agreements.

RELATES TO: KRS 304.3-200, 304.3-240, 304.5-120, 304.33-140
STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may adopt administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation restricts the use of life and health reinsurance agreements as so-called "surplus relief" when the effect is to distort reporting of the life and health insurer's true financial condition, take credit for or a reduction from liability for reinsurance agreements which do not involve a transfer of risk, and which conceal the fact that the insurer is in hazardous financial condition.

Section 1. Purpose and Scope. (1) The Department of Insurance recognizes that life and health insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.

(2) However, the department has become aware that some life and health insurers, in the capacity of ceding insurers, have at times entered into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer while providing little or no indemnification of policy benefits by the reinsurer. In addition, the Department of Insurance is concerned with reserve credits taken under reinsurance agreements which provide some indemnification of policy benefits where those policy benefits are not included in the gross reserves established by the ceding insurer, such as catastrophic mortality or extraordinary survival. The terms of these agreements and those described in Section 2 of this administrative regulation would violate:

(a) KRS 304.3-240 relating to financial statements of insurers because they result in distorted financial statements which do not properly reflect the financial condition of the ceding life and health insurer;

(b) KRS 304.5-120 relating to reinsurance reserve credits because they result in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and

(c) KRS 304.3-200 and 304.33-140 relating to creation of a situation that may be hazardous to policyholders and the people of Kentucky.

(3) This administrative regulation shall apply to all domestic life and health insurers and to all other authorized life and health insurers which are not subject to a substantially similar administrative regulation in their domiciliary state. This administrative regulation shall also similarly apply to licensed property and casualty insurers with respect to their health business. This administrative regulation shall not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

Section 2. Accounting Requirements. (1) An ~~A-life~~ insurer subject to this administrative regulation shall not, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Department of Insurance if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(a) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for material participation by the reinsurer in one (1) or more of the following risks: mortality, morbidity, investment, or surrender benefit;

(b) The reserve credit taken by the ceding insurer is not in compliance with the insurance code or Department of Insurance administrative regulations, or actuarial interpretations or standards approved by the Department of Insurance;

(c) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the reinsurance agreement;

(d) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against the current and prior years' losses nor payment by the ceding insurer of an amount equal to the current and prior years' losses upon voluntary termination of in-force reinsurance by the ceding insurer shall be considered a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement;

(e) The ceding insurer may be deprived of surplus at the reinsurer's option or automatically upon occurrence of some event, such as insolvency of the ceding insurer, except that termination of

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the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, including but not limited to modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be a deprivation of surplus;

(f) The ceding insurer must, at specific points in time scheduled in the agreement, terminate, or automatically recapture, all or part of the reinsurance ceded;

(g) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in this account are available for the payment of benefits; or

(h) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies. It is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company;

(i) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The table found in appendix A identifies the risks which are considered to be significant for a representative sampling of products or types of business. For products not specifically included, the risks determined to be significant shall be consistent with the table found in appendix A;

(j)1. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured, and the ceding company does not (other than for the classes of business excepted in subparagraph 2 of this paragraph transfer the underlying assets to the reinsurer, legally segregate the assets in a trust or escrow account, or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

2. Notwithstanding the requirements of subparagraph 1 of this paragraph, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of such assets:

- a. Health insurance - LTC/LTD;
- b. Traditional nonpar permanent;
- c. Traditional par permanent;
- d. Adjustable premium permanent;
- e. Indeterminate premium permanent;
- f. Universal life fixed premium (no dump-in premiums allowed).

3. The associated formula for determining the reserve interest rate adjustment shall reflect the ceding company's investment earnings and incorporate all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: I is the net investment income.

CG is capital gains less capital losses.

X is the current year cash and invested assets plus investment income due and accrued less borrowed money.

Y is the same as X but for the prior year.

(k) Settlements are made less frequently than quarterly, or payments due from the reinsurer are not made in cash within ninety (90) days of the settlement date;

(l) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured;

(m) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured;

(n) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer. All of the significant risks inherent in the business reinsured are not

transferred and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(2) An ~~A~~ ~~life~~ insurer subject to this administrative regulation may, with prior approval of the Commissioner of Insurance, take reserve credit as the Commissioner of Insurance may deem consistent with the insurance code, administrative regulations of the Department of Insurance, or actuarial interpretation or standards approved by the Department of Insurance.

Section 3. (1) Agreements entered into after the effective date of this administrative regulation which involve the reinsurance of business issued prior to the effective date of the agreements along with any subsequent amendments shall be filed by the ceding company with the commissioner within thirty (30) days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion in the annual statement with respect to valuation of reserves shall consider this administrative regulation and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this department. The actuary shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the annual and quarterly financial statements and to demonstrate that such work conforms to this administrative regulation.

(2) Any increase in surplus net of federal income tax resulting from arrangements described in subsection (1) of this section shall be identified separately on the insurer's statutory annual and quarterly financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account). Recognition of the surplus increase as income shall be reflected on a net of tax basis in the "reinsurance ceded" line as earnings emerge from the business reinsured.

Section 4. ~~(3-)~~ Written Agreements. (1) Reinsurance agreements or amendments to any agreements shall not be used to reduce any liability or establish any asset in any financial statement filed with the Department of Insurance unless the agreement, amendment, or letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time not exceeding ninety (90) days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(3) The reinsurance agreement shall contain provisions which provide that:

1. The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured and that there are no understandings between the parties other than as expressed in the agreement; and

2. Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

Section 5. ~~(4-)~~ Existing Agreements. ~~Life~~ Insurers subject to this administrative regulation may continue to reduce liabilities or establish assets in financial statements filed with the Department of Insurance for reinsurance ceded under types of reinsurance agreements described in Sections 1(2) and 2 of this administrative regulation if:

(1) The agreements were executed and in force prior to the effective date of this administrative regulation;

(2) No new business is ceded under the agreements after the effective date of this administrative regulation;

(3) The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1994, or a later date approved by the Commissioner of Insurance as a result of an application made by the ceding insurer prior to December 31 of

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the year in which this administrative regulation becomes effective;

(4) The reduction of the liability or establishment of the asset is otherwise permissible under all other applicable provisions of the insurance code, administrative regulations of the Department of Insurance, or actuarial interpretations or standards approved by the Department of Insurance; and

(5) The Department of Insurance is notified within ninety (90) days following the effective date of this administrative regulation of the existence of the reinsurance agreements and all corresponding credits taken in the ceding insurer's 1990 annual statement.

APPENDIX A

Risk Categories

- A. Morbidity
- B. Mortality
- C. Lapse
- D. Credit Quality
- E. Reinvestment
- F. Disintermediation

Classes of Insurance Business

- Health Insurance - other than LTC/LTD*
- Health Insurance - LTC/LTD*
- Immediate Annuities
- Single Premium Deferred Annuities
- Flexible Premium Deferred Annuities
- Guaranteed Interest Contracts
- Other Annuity Deposit Business
- Single Premium Whole Life
- Traditional Nonpar Permanent
- Traditional Nonpar Term
- Traditional Par Permanent
- Traditional Par Term
- Adjustable Premium Permanent
- Indeterminate Premium Permanent
- Universal Life Flexible Premium
- Universal Life Fixed Premium

Risk Categories

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
+ 0	+ 0	0 0	0 0		
+ 0	+ +	+ +	+ 0		
0 +	0 +	+ +	+ 0		
0 0	+ +	+ +	+ +		
0 0	+ +	+ +	+ +		
0 0	+ +	+ +	+ +		
0 +	+ +	+ +	+ +		
0 +	+ 0	0 0	0 0		
0 +	+ +	+ +	+ +		
0 +	+ +	+ +	+ +		
0 +	+ +	+ +	+ +		
0 +	+ +	+ +	+ +		
0 +	+ +	+ +	+ +		

Where:

- + = significant risk
- 0 = insignificant risk
- *LTC = long-term care
- *LTD = long-term disability

a. Lapse is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

b. Credit Quality is the risk that invested assets supporting the reinsured business will decrease in value. Credit Quality does not include market value declines due to changes in interest rates.

c. Reinvestment is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will earn less than expected.

d. Disintermediation is the risk that policy loans and surrenders increase, or maturing contracts do not renew at anticipated rates of renewal, during a period of increasing interest rates.

THEODORE RICH, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: January 31, 1996

FILED WITH LRC: February 5, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1996 at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being

heard at this hearing shall notify this agency in writing by March 16, 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 five days prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on March 21, 1996, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032.

REGULATORY IMPACT ANALYSIS

Contact person: Carla Montgomery

(1) Type and number of entities affected: All authorized life insurers, property and casualty insurers, and reinsurers. There are approximately 1397 life insurers and property and casualty insurers. There are approximately thirty (30) accredited reinsurers. There is an unknown amount of unlicensed or unaccredited reinsurers that could qualify as reinsurers.

(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. The department does not anticipate any effect on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(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 will now apply to property and casualty insurers as well as life insurers. The amendments establishes more accounting requirements and restrictions on reinsurance agreements. In Section 3, insurers shall file reinsurance agreements with our department.

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

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs of saving:

1. First year: The department does not anticipate any costs or savings.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department's financial division will be reviewing the reinsurance agreements that are filed with the department.

(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 budget already in effect for the department 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: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives

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were rejected: The department has adopted the language in the NAIC model regulation. There are no alternatives.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) TIERING: Is tiering applied? Tiering was not used, because the administrative regulation will apply equally to all life insurers, property and casualty insurers, and reinsurers.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 15, 1996

GENERAL GOVERNMENT CABINET
State Board of Elections
(New Administrative Regulation)

31 KAR 4:061. Repeal of 31 KAR 4:060.

RELATES TO: KRS 116.112

STATUTORY AUTHORITY: KRS 116.112(1)

NECESSITY AND FUNCTION: 31 KAR 4:060 is no longer required and is inconsistent with KRS 116.112 which implements the requirements of the National Voter Registration Act (the "NVRA").

Section 1. 31 KAR 4:060, Biennial purge, is hereby repealed.

JOHN Y. BROWN, III, Chairman

APPROVED BY AGENCY: February 15, 1996

FILED WITH LRC: February 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 29, 1996 at 9 a.m., in the conference room of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 the contact person.

CONTACT PERSON: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-7100.

REGULATORY IMPACT ANALYSIS

Contact person: George Russell, Executive Director

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

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

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

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

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

this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

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

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

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

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic effect on the Commonwealth of Kentucky.

(b) Kentucky:

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

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This repealing administrative regulation will affect 120 county boards which are charged with administering the election laws within their counties.

3. State the aspect or service of local government to which this administrative regulation relates. This repealing administrative regulation relates to county boards of elections administering the election laws.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This repealing administrative regulation will

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have no effect on the expenditures and revenues of a local government.

REGULATORY IMPACT ANALYSIS

KENTUCKY LOTTERY CORPORATION (New Administrative Regulation)

202 KAR 3:020. Procurement procedures.

RELATES TO: KRS 154A.060(2)(a), 154A.120

STATUTORY AUTHORITY: KRS 154A.050(1)(d), 154A.120(1)

NECESSITY AND FUNCTION: Pursuant to KRS 154A.120(1), the Kentucky Lottery Corporation is authorized to adopt administrative regulations establishing its procurement procedures. Furthermore, the statute states that the administrative regulations shall be designed to provide for the purchase of supplies, equipment, services and construction items in such a manner as to provide the greatest long-term benefit to the Commonwealth, the greatest integrity for the corporation, and the best services and products for the public. This administrative regulation establishes the procurement procedures of the Kentucky Lottery Corporation in a manner consistent with KRS 154A.120(1) and will apply in lieu of the Kentucky Model Procurement Code, unless otherwise specifically indicated.

Section 1. Procurement Procedures. On December 17, 1993, the Board of Directors of the Kentucky Lottery Corporation adopted the Kentucky Lottery Corporation Procurement Procedures. Revisions to the Procurement Procedures were approved on January 26, 1996.

Section 2. (1) The "Kentucky Lottery Corporation Procurement Procedures, as adopted on December 17, 1993, and revised on January 26, 1996," are incorporated herein by reference.

(2) The "Kentucky Lottery Corporation Procurement Procedures, as adopted on December 17, 1993, and revised on January 26, 1996," may be inspected, copied, or obtained from Sharon E. Barone, Director of Purchasing, at the offices of Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271, Monday through Friday, from 8 a.m. to 5 p.m.

ARTHUR L. GLEASON, JR., President & CEO

CAMILLE BATHURST, Corporate Secretary

APPROVED BY AGENCY: February 14, 1996

FILED WITH LRC: February 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 29, 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 March 24, 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, (502) 473-2360.

Contact Person: Michael J. Denney, Attorney

(1) Type and number of entities affected: This regulation will affect the Kentucky Lottery Corporation and vendors doing business with the corporation.

(2) Direct or indirect cost 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 this proposed administrative 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: None expected.

2. Second and subsequent years: None expected.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since its inception, the Kentucky Lottery Corporation has conducted its procurement procedures in a manner consistent with the Kentucky Model Procurement Code. This administrative regulation will not significantly affect those procedures, except for the provision raising the small purchase limit from \$5,000 to \$20,000. Raising the limit should increase administrative efficiency for the first year and each year thereafter.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See (3)(a)(1), above.

(4) Assessment and anticipated effect on state and local revenues: According to KRS 154A.130(1), surplus net revenues of the Kentucky Lottery Corporation are required to be transferred to the General Fund. Therefore, increasing administrative efficiency may have a positive impact on state revenues.

(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 the 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

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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 the detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or governmental 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 and vendors doing business with the corporation.

KENTUCKY SPINAL CORD AND HEAD INJURY RESEARCH BOARD (New Administrative Regulation)

202 KAR 4:010. Spinal Cord and Head Injury Research Program.

RELATES TO: KRS 189.125, 189.394(5), 211.504

STATUTORY AUTHORITY: KRS 211.500, 211.502, 211.504

NECESSITY AND FUNCTION: KRS 211.502 provides that the Kentucky Spinal Cord and Head Injury Research Board promulgate administrative regulations necessary to review and authorize spinal cord and head injury research projects and programs, pursuant to the provisions of KRS 211.500 to 211.504. This administrative regulation establishes the protocol by which the Kentucky Spinal Cord and Head Injury Board will review research grant proposals from the University of Kentucky and the University of Louisville. It further establishes the guidelines by which grant proposals from the universities are rated and the mechanism by which funds are allocated for the appropriate grants proposals.

Section 1. Definitions. (1) "APA" means the American Paralysis Association.

(2) "Applicant" means the entity within the University of Kentucky or University of Louisville applying for the grant award.

(3) "Board" means the Kentucky Spinal Cord and Head Injury Research Board.

(4) "Host institution" means the University of Kentucky or the University of Louisville.

(5) "NIH" means the National Institutes of Health.

(6) "PI" means the principle investigator.

(7) "SAC" means the Science Advisory Council of the American Paralysis Association.

(8) "Trust" means the Kentucky Spinal Cord and Head Injury Trust.

Section 2. Proposal Submission Process. (1) A research project proposal shall be submitted to the board on "Proposal Application and Instructions" form.

(2) The submission deadline for research proposal applications shall be September 30 of each year.

(3) The board shall transmit a project proposal to the director of research with a request that he transmit the:

(a) Project proposal to the members of the SAC of the APA for their review; and

(b) Rating recommendations for each project made by the members of the SAC to the board.

(4) After review of the rating recommendations submitted to the board, the board shall determine which project proposal shall be

funded.

(5) An applicant shall be notified of the board's decision in December of each year.

Section 3. Project Proposal Review Criteria. (1) A project proposal shall be reviewed by the board for scientific merit and adherence to the research priorities established by subsections (2) and (3) of this section.

(2) A project proposal shall be reviewed for scientific merit as follows:

(a) Adequacy of prior research and theory in providing a basis for the research;

(b) Adequacy of methods;

(c) Adequacy of environment, facilities, equipment, available expertise, research atmosphere;

(d) Qualifications and productivity of the PI and his key staff;

(e) Time commitments of the PI and his key staff;

(f) Availability of subjects or patients where relevant;

(g) Adequacy of procedures for assessing the effect of interventions on recovery; and

(h) Other factors that affect the potential of the applicant to address successfully the research aims.

(3) A project proposal shall be reviewed by the board for adherence to research priorities as follows:

(a) In vivo and in vitro studies on naturally occurring phenomena that may:

1. Promote neuronal growth;

2. Encourage the formation of synapses;

3. Enhance the production of myelin;

4. Restore conduction capabilities; or

5. Otherwise lead toward restoring compromised circuitry in the injured spinal cord or brain.

(b) Evaluation of the efficacy of pharmacological agents or other interventions that:

1. Protect against secondary neuronal injury;

2. Improve function in chronic spinal cord or brain injury; or

3. Provide insight into the mechanisms causing such damage.

(c) Biological characterization of spinal cord or head injury in well-defined animal models, and in the human spinal cord or brain, specifically documenting the neuronal systems that are most vulnerable to the functional losses that occur as a result.

(d) Development of new and more sensitive approaches for evaluating recovery after injury.

Section 4. Research Grantee Responsibilities. (1) A research contract shall be granted for a three (3) year period subject to the conditions established by this section. Renewal in years two (2) and three (3) shall depend upon fulfillment of contract terms.

(2) A grantee shall submit to the board an annual progress report, including a narrative and financial report of his progress.

(3) The annual progress report shall be due sixty (60) days prior to the anniversary of the contract start date.

(4)(a) A grantee shall submit a final:

1. Narrative progress report thirty (30) days after completion or termination of the contract; and

2. Financial report no later than ninety (90) days after completion or termination of the contract.

(b) The financial report shall be completed by the office of grants and contracts of the contracting institution.

(5) The PI shall transmit to the board copies of publications that emerge as a result of the funded research, during and after the period of the contract.

(6) A grantee shall acknowledge the source of funding from the trust in all publications and presentations.

Section 5. Incorporation by Reference. (1) "Proposal Application and Instructions KSB 8/95" is incorporated by reference.

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(2) This form may be inspected, copied, or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday.

JAMES SHAUGHNESSY, Chairman

APPROVED BY AGENCY: February 12, 1996

FILED WITH LRC: February 13, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1996 at 9 a.m. in the Cabinet for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564-8966.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Shaughnessy, Chairman or Danise Newton, CHR Staff

(1) Type and number of entities affected: University of Kentucky and University of Louisville who may apply for research grant funding and the public of Kentucky affected by head and spinal cord injury.

(2) Direct and indirect cost to those affected:

(a) Cost of living and employment in a geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: There was no public hearing requested as a result of the Notice of Intent to file an ordinary regulation. However, it will not effect the cost of living or employment in the state.

(b) Cost doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: There was no public hearing requested as a result of the Notice of Intent to file an ordinary regulation. However, it will have no effect on the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (Note any effects upon competition) for the: There are no additional compliance, reporting, or paperwork requirements required in this regulation except an annual report required of the board to the Governor, the General Assembly, and the Legislative Research Commission.

(3) Effects on the promulgating administrative body: Minimal amount of staff assistance to the board in the processing of grant proposals. Meetings of the board are held at least twice a year. All costs other than staff time have been and will continue to be charged to the Kentucky Spinal Cord and Head Injury Research Trust Fund comprised of revenues received from penalties imposed by KRS 189.394(5) and 189.125.

(a) Direct and indirect cost:

1. First year: Minimal

2. Continuing costs: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Annual report required by the board to the Governor, the General Assembly and the Legislative Research Commission.

(4) Assessment of anticipated effect on state and local revenues: All costs other than staff time have been and will continue to be

charged to the Kentucky Spinal Cord and Head Injury Research Trust Fund comprised of revenues received from penalties imposed by KRS 189.394(5) and 189.125.

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: Revenues received from penalties imposed by KRS 189.394(5) and KRS 189.125.

(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: There was no public hearing requested as a result of the Notice of Intent. However, this regulation will not create any additional economic impact on the public other than from the use of the revenues from penalties received from KRS 189.394(5) and 189.125.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of recipients of research funds were not considered since the provisions are mandated by state law.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this regulation will have a beneficial effect on the public's health in terms of research done by the universities that could determine ways in which to prevent or treat head and spinal cord injury.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: The fines imposed by KRS 189.394(5) and 189.125 would not be used to research spinal cord and head injury.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because it does not create disproportional impact on part, class, or division of regulated entity.

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. Relates only in the enforcement of penalties imposed by KRS 189.394(5) and 189.125.

3. State the aspect or service of local government to which this administrative regulation relates. Only in the enforcement of penalties imposed by KRS 189.394(5) and KRS 189.125.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.195, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY AND FUNCTION: To specify requirements for issuing licenses and electronically reporting license sale data and license revenue; to detail the procedures for suspending or revoking

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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.

(3) The hearing officer shall conduct the hearing and present his

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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

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: 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.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

301 KAR 5:030. Purchasing licenses and obtaining replacement licenses.

RELATES TO: KRS 150.090, 150.170, 150.175, 150.195, 150.235, 150.990

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STATUTORY AUTHORITY: KRS 150.090, 150.195

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
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 25, 1995

FILED WITH LRC: February 14, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 24, 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: 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

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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.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)**

401 KAR 50:033. Acid rain phase II application forms.

RELATES TO: 401 KAR Chapter 50, KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 70.1-70.11, 72.1-72.96, 73.1-73.90, 74.1-74.61, 75.1-75.67, 76.1-76.16, 77.1-77.6, 78.1-78.20, 42 USC 7651 to 7651o, 7661 to 7661f

STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.20-110, 224.20-120, 40 CFR Parts 70.1-70.11, 72.1-72.96, 73.1-73.90, 74.1-74.61, 75.1-75.67, 76.1-76.16, 77.1-77.6, 78.1-78.20, 42

USC 7651 to 7651o, 7661 to 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 provides for the incorporation by reference of the acid rain phase II application forms for use by regulated entities, pursuant to 401 KAR 50:035 and 401 KAR 50:072, for certification of a designated representative, issuance of the phase II permit, new unit exemptions, retired unit exemptions, repowering extension plans, opt-in sources, and thermal energy sources.

Section 1. Definitions. As used in 40 CFR 72.1 through 72.96, 73.1 through 73.90, 74.1-74.61, 75.1 through 75.67, 76.1 through 76.16, 77.1 through 77.6, and 78.1 through 78.20 (40 CFR Parts 72, 73, 74 75, 76, 77, and 78), the following terms used in this administrative regulation shall have the meanings given in this administrative regulation, unless the content clearly indicates otherwise. All other terms shall have the meanings given them in 401 KAR 50:010.

(1) "Agency" means the Natural Resources and Environmental Protection Cabinet.

(2) "EPA" or "Environmental Protection Agency" means the Natural Resources and Environmental Protection Cabinet.

(3) "Administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) The following eight (8) forms, as required in 40 CFR 72.72(b)(4), are incorporated by reference:

- (a) Certificate of Representation;
- (b) Phase II Permit Application;
- (c) Repowering Extension Plan;
- (d) New Unit Exemption;
- (e) Retired Unit Exemption;
- (f) Opt-in Permit Application;
- (g) Opt-in Permit Application Worksheet; and
- (h) Thermal Energy Plan Form.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

- (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;
- (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;
- (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;
- (d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;
- (e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;
- (f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606) 878-0157;
- (g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304; and
- (h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: February 8, 1996

FILED WITH LRC: February 14, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed administrative regulation will be conducted on March 29, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at

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least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation incorporates by reference the forms required by the Administrator in 40 CFR 72.72(b)(4). The regulation applies to each affected source and to each of the following units: units listed in Table 1 of 40 CFR 73.10(a) as phase I units, existing units identified in Table 2 of 40 CFR 73.10(b), and various other existing utility units and new utility units. This administrative regulation is being proposed by the cabinet so that Kentucky may enforce the federal acid rain program regulations in 40 CFR Part 72 and the state administrative regulation 401 KAR 50:072.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in 56 FR 63002 (December 3, 1991) and the Code of Federal Regulations at 40 CFR Part 72 (as revised July 1, 1994) for phase II acid rain affected sources and affected units.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in geographical areas where affected sources are located.

(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 no compliance, reporting, or paperwork requirements beyond those required in the federal acid rain program. Sources in Kentucky are subject to the same provisions as required of all other affected sources in the country.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1. and 2. above.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal acid rain program regulation (40 CFR Part 72), and so that sources will be able to work with the state to obtain the necessary acid rain permits rather than the federal government.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Affected sources will benefit from this administrative regulation by obtaining permits from the state rather than the federal government. This administrative regulation will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates no detrimental effect on the environment and public health if the administrative regulation is not implemented, since the federal regulation will be implemented and enforced by the U.S. EPA if Kentucky does not seek delegation.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is anticipated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal acid rain phase II application forms so that Kentucky may enforce the federal acid rain program for phase II.

(11) TIERING: Is tiering applied? No. The provisions of this administrative regulation shall apply as stated in item (1) of this Regulatory Impact Analysis. There is no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. A unit, part, or division of local government with an affected unit under the acid rain program is affected.

3. State the aspect or service of local government to which this administrative regulation relates. A fossil-fuel fired electric utility unit owned or operated by local government is an affected unit. 40 CFR Part 72 establishes requirements for affected units in phase II of the acid rain program.

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

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determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title IV of the Clean Air Act (42 USC 7651 through 7651o) mandates the U.S. EPA to promulgate standards for phase II of the acid rain program and provides for state programs to use the applicable forms prescribed by the Administrator. The federal regulation (40 CFR 72.72(b)(4)) establishes standards, procedures, and requirements for sources subject to 40 CFR 72.72(b)(4).

2. State compliance standards. The federal regulation contains standards for sources subject to 40 CFR 72.72(b)(4), and provisions for maintaining those standards. The requirements in the state regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The standards appear at 40 CFR 72.72(b)(4).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal acid rain program regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Chief State School Officer (New Administrative Regulation)

701 KAR 5:076. Repeal of 701 KAR 5:075, Antinepotism certifications of superintendents.

RELATES TO: KRS 160.380

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: 701 KAR 5:075 is no longer required because in the last three (3) years superintendents have become much more aware of the antinepotism provisions of KRS 160.380. Thus, filing an annual statement about lack of nepotism violations in the school district is unnecessary paperwork and should be discontinued.

Section 1. 701 KAR 5:075, Antinepotism certifications of superintendents, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

WILMER S. CODY, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: February 13, 1996

FILED WITH LRC: February 14, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this

agency in writing by March 24, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Mr. Kevin M. Noland, Office of Legal Services

(1) Type and number of entities affected: 176 school district superintendents.

(a) 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: Reduces paperwork review of 176 written statements.

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

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: None needed.

(6) To the extent available from 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:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only method to repeal an unnecessary regulation.

(8) Assessment of expected benefits: Reduce reporting requirements.

(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:

(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.

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PUBLIC PROTECTION & REGULATION CABINET Department of Insurance

806 KAR 5:025. Credit for reinsurance.

RELATES TO: KRS 304.5-140

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. The proposed administrative regulation sets forth rules and procedural requirements for carrying out the provisions of KRS 304.5-140.

Section 1. Definitions. As used in this section:

(1) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(2) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(3) "Obligations", as used in Section 2(11) of this administrative regulation, means:

- (a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
- (b) Reserves for reinsured losses reported and outstanding;
- (c) Reserves for reinsured losses incurred but not reported; and
- (d) Reserves for allocated reinsured loss expenses and unearned premiums.

Section 2. Requirements for Trust Agreements Qualified under KRS 304.5-140. (1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in KRS 304.5-140(1)(a).

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements. If the commissioner approves the use of the foreign branch office as trustee, then its use shall be approved by the beneficiary in writing. The trust agreement shall provide that the written notice described in subsection (4)(a) of this section shall also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(4) The trust agreement shall provide that:

(a) The beneficiary shall have the right to withdraw assets from the trust account at any time after giving written notice to the trustee. However, the beneficiary is not required to give notice to the grantor;

(b) Other statements or documents shall not be required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) The agreement shall not be subject to any conditions or qualifications outside of the trust agreement; and

(d) The agreement shall not contain references to any other agreements or documents except as provided for under subsection (11) of this section.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

- (a) Receive and hold all assets in a safe place;
- (b) Determine that all assets are in such form that the beneficiary,

or the trustee upon direction by the beneficiary, may negotiate any assets whenever necessary, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account both at the inception and at intervals no less frequent than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this administrative regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

(a) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in KRS 304.5-140(1) apart from its general assets, in trust for such uses and purposes specified in paragraphs (a) and (b) of this subsection as may remain executory after such withdrawal and for any period after the termination date.

(12) The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions required by Section 4(1)(b) of this administrative regulation, as long as these required conditions are included in the trust agreement.

Section 3. Permitted Conditions for Trust Agreements Qualified under KRS 304.5-140. (1) The trust agreement may provide that the trustee may resign only if written notice of resignation is given to the

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beneficiary and grantor of the notice which shall be effective not less than ninety (90) days after receipt of the notice. The trust agreement may provide that the grantor may remove the trustee only if written notice is given to the trustee and beneficiary which shall be effective not less than ninety (90) days after receipt of the notice. The resignation or removal of the trustee shall not be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor, and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) Unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Section 4(1)(b) of this administrative regulation, the trustee may be given authority to invest and accept substitutions of any funds in the account provided that no investment or substitution shall be made without prior approval of the beneficiary.

(4) The trust agreement may provide that the beneficiary may designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide upon termination of the trust account that all assets not previously withdrawn by the beneficiary shall be delivered over to the grantor with written approval by the beneficiary.

Section 4. Additional Conditions for Reinsurance Agreements Qualified under KRS 304.5-140. (1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(a) Require the assuming insurer to enter into a trust agreement, to establish a trust account for the benefit of the ceding insurer, and to specify what the agreement is to cover;

(b) Stipulate that assets deposited in the trust account shall be valued according to the assets current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), investments of the types permitted by the Insurance Code, or any combination of the above. The investments shall be issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

(c) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments. This, provides that the ceding insurer or the trustee, upon the direction of the ceding insurer, may negotiate these assets without consent or signature from the assuming insurer or any other entity whenever necessary;

(d) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the

reinsurance agreement. The assets shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

1. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

2. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

3. To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded from the ceding insurer liabilities for policies ceded under the agreement. The account shall include but not be limited to amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and

4. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw all or any part of the trust assets from the trust account and transfer those assets to the assuming insurer provided that:

1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain the deposit in the required amount at all times; or

2. After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(b) Provide for:

1. The return of any amount withdrawn in excess of the actual amounts required for subsection (1)(e)1, 2 and 3 of this section or in the case of subsection (1)(e)4 of this section, any amounts that are subsequently determined not to be due; and

2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (1)(e)3.

(c) Permit the award by any arbitration panel or court of competent jurisdiction of:

1. Interest at a rate different from that provided in paragraph (b)2 of this subsection;

2. Court of arbitration costs;

3. Attorney's fees; and

4. Any other reasonable expenses.

(3) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this administrative regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Existing agreements. Notwithstanding the effective date of this administrative regulation, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996 will continue to be acceptable until January 1, 1997, at which time the agreements will have to be in full compliance with this administrative regulation for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary shall not be construed to affect any actions or rights which

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the commissioner may take or possess pursuant to the provisions of the laws of this state.

Section 5. Letters of Credit Qualified under KRS 304.5-140. (1) The letter of credit shall be clean, irrevocable and unconditional, and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit, present it in order to obtain funds, and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit shall not contain reference to any other agreements, documents, or entities, except as provided in subsection (9)(a) of this section.

(2) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that the information is for internal identification purposes only.

(3) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one (1) year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of not less than thirty (30) days' notice prior to the date of expiration or nonrenewal.

(5) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article 19 of Publication 400 occur.

(7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a).

(8) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (7) of this section, then the following additional requirements shall be met:

(a) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The "evergreen clause" shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(9) Reinsurance agreement provisions.

(a) The reinsurance agreement for which the letter of credit is obtained may contain provisions which:

1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

2. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:

a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such

policies;

b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

c. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

d. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

3. All of the foregoing provisions of paragraph (a) of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in paragraph (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a)2c of this subsection; or

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of paragraph (a)2d of this subsection, any amounts that are subsequently determined not to be due.

(c) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of paragraph (a)2 of this subsection, require that the parties enter into a "trust agreement" which may be incorporated into the reinsurance agreement or be a separate document.

(10) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

Section 6. Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section 7. Reinsurance Contract. Credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of KRS 304.5-140 after the adoption of this administrative regulation unless the reinsurance agreement:

(1) Includes a proper insolvency clause pursuant to KRS 304.5-140(5) and 304.33-350 of the Insurance Code; and

(2) Includes a provision pursuant to KRS 304.5-140(2)(f) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

Section 8. (1) An assuming reinsurer shall file a certificate of assuming insurer, Form AR-1, to become accredited pursuant to KRS 304.5-140, and as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records pursuant to KRS 304.5-140(2)(b)1.

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(2) The form AR-1, revised December 1995, shall be incorporated by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m to 4:30 p.m.

Section 9. Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of the administrative regulation shall conform to the requirements of the Act and this administrative regulation if credit is to be given to the ceding insurer for such reinsurance.

THEODORE RICH, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: January 31, 1996

FILED WITH LRC: February 5, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1996 at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 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 five days prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on March 21, 1996, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032.

REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery

(1) Type and number of entities affected: All authorized insurers are affected which is approximately 1397. There are approximately thirty (30) accredited reinsurers that are affected. There is an unknown amount of unlicensed and unaccredited reinsurers that could qualify as reinsurers.

(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. The department does not anticipate any effect on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: The affected entities must follow the procedures set forth in this administrative regulation with regard to trust agreements and letters of credit.

2. Second and subsequent years: same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect on the costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirement: The regulation assists the department in implementing KRS 304.5-140. The department will have one new form filed with it for accredited reinsurers.

(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 normal budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department used the NAIC model regulation language. There were no alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare.

(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

(10) Tiering: Is tiering applied? Tiering is not applied, because the administrative regulation will apply equally to all life insurers, property and casualty insurers, and reinsurers.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of February 5, 1996

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 5, 1996, at 10 a.m. in Room 149 of the Capitol Annex. Representative James E. Bruce, Acting Chairman, called the meeting to order, and the secretary called the roll. The minutes of the January 10, 1996 meeting were approved.

Present were:

Members: Representative James E. Bruce, Acting Chairman, Senators Fred Bradley, Nick Kafoglis, John David Preston; Representative Jimmy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Susan Wunderlich, Peggy Jones, Don Hines.

Guests: David T. Buckingham, Wilbur Frye, Eric E. Fabrizio, University of Kentucky Regulatory Services; Heidi Engle, Jim Clayville, Jeff Fryman, Auditor of Public Accounts; Hanson Williams, Personnel Board; Kim Blich, Office of Financial Management and Economic Analysis; David B. Peterson, Barbara Carter, Cabinet for Human Resources; Gail Prewitt, Finance and Administration Cabinet; Janet K. Creech, Daryl Hyatt, Courtney L. Carter, Revenue Cabinet; Nathan Goldman, Board of Nursing; James W. Shaughnessy, Kentucky Spinal Cord and Head Injury Research Board; Tom Bennett, Lobby McManis, Mark Marraccini, Department of Fish and Wildlife Resources; John McCauley, Don Lamar, Agriculture Department; Michael F. Potter, University of Kentucky; David Wicker, Laurance McCabe, Petroleum Storage Tank Commission; Jack Damron, Robert Powell, Department of Corrections; Kevin Noland, Department of Education; Ronda Tamme, Rita Osborne, Office of Teacher Education and Certification; Robin Gwinn, Department of Insurance; Tom Barnes, Department of Housing, Buildings and Construction; Patty Sewell, Sarah Wilding, Department for Health Services; Steve Veno, Cabinet for Families and Children; Victoria E. Hardin, DCSE (Division of Child Support ENF); Anne Hager, Pat Patterson, DSI; Karen Doyle, Cabinet for Human Resources; Tod Griffin, Kentucky Retail Federation; Frank L. Sellinger, F.S. Land; Robert Gray, Mortgage First Land Surveyors; Stanley Willett, Willett Engineering Company.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Agricultural Experiment Station: Seed

12 KAR 1:115. Sampling, analyzing, testing, and tolerances. This administrative regulation was amended to specify the codified statutory citations in KRS Chapter 250 in the RELATES TO and STATUTORY AUTHORITY paragraphs rather than referring to 1994 ACTS, Chapter 370.

Board of Nursing

201 KAR 20:215. Contact hours, recordkeeping and reporting requirements for renewal of licensure. In response to questions by Senator Kafoglis, Nathan Goldman, General Counsel for the Board of Nursing, stated that: (1) prior to the amendments to this administrative regulation: (a) nurse practitioners were not required to meet continuing education requirements; (b) certification as a nurse practitioner was accepted in lieu of continuing education; (c) it was believed that this resulted in various nurse practitioner categories not receiving continuing education; (2) this administrative regulation imposes the same continuing education requirements on nurse practitioners that are imposed on other classes of nurses; and (3) this administrative regulation lowers the fee for a request for approval of certain continuing education programs, because nurses who are required to meet the new continuing education requirements: (a) generally take CME type programs for which the Board generally has not approved

a provider; and (b) it would only be fair to lower the fees since they will have to request approval for most courses.

This administrative regulation was amended as follows: (1) Citations of statutes were corrected in the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION paragraphs; (2) a definition for "earning period" was added to Section 1; (3) The NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for this administrative regulation and the function it will serve; (4) Sections 1(1),(3)(b),(4); 2; 3(1)(a),(2)(a); 3(3)(a), 3(3)(a)3.,(b),(4); and 4 were amended to: (a) comply with the format requirements of KRS 13A.220(4) and 13A.222, and (b) clearly establish requirements; and (5) pursuant to KRS 13A.210(1), the Tiering Statement was amended to include a statement of the reason tiering was not applied.

201 KAR 20:240. Fees for applications and for services. Representative Lee stated it was refreshing to see an administrative regulation that decreased fees. Mr. Goldman stated that the amendment to this administrative regulation: (1) did not actually decrease fee; and (2) pursuant to KRS Chapter 13A: (a) deleted language that established only the maximum fees that may be charged, rather than the actual fees charged by the Board; and (b) established the actual fees charged by the Board.

Senator Kafoglis stated that the initial review stated that there appeared to be a conflict because, although fees were not increased, the Board previously had stated that it needed a fee increase in order to function. Mr. Goldman stated that the initial review was not completely accurate because: (1) this administrative regulation was amended to state the actual fee imposed by the Board, rather than the maximum fee that may be imposed by the Board; and (2) the administrative regulation that would have increased fees had been withdrawn. Senator Kafoglis stated that: (1) in order to avoid a credibility problem, the statements in administrative regulations should reflect exactly what the Board and the administrative regulation intended and required; and (2) the Board should be prepared for hard questions if it increased fees.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct the citation of statutes; and (2) Sections 1(1),(2), 2(1), 3 through 5 were amended to comply with the format requirements of KRS 13A.220(4), and the drafting requirements of KRS 13A.222.

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:114 & E. Contractor certification. Larry McCabe, Executive Director of the Petroleum Storage Tank Commission, stated that the amendments to this administrative regulation: (1) remove the requirement that a certified contractor be physically on-site for all corrective activity; (2) require that the Commission reimburse only for work that is reasonable and necessary; (3) provide a procedure for suspension or revocation of certification; and (4) allow the certification test to be given more often.

In response to questions from Representative Lee, Mr. McCabe stated that: (1) previously a certified contractor was required to be on site whenever work on the underground storage tank was being done; (2) this requirement was neither efficient nor cost effective; (3) this amendment should reduce the cost of remediation; (4) the Commission has already begun to see a reduction in billing as a result of the filing of this emergency administrative regulation.

Representative Bruce stated that: (1) while the filling station operators received their reimbursement immediately, a 93 year old constituent of his had a problem receiving reimbursement from the

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Commission; (2) he hoped the Commission would keep small business in mind when reimbursing from the fund; and (3) he realized the Commission had made significant progress in speeding up the reimbursement procedure.

Representative Lee stated that: (1) he wanted to commend Mr. McCabe for the work he is doing at the Commission; (2) Mr. McCabe understands the problems of the consumers as well as the storage tank owners, and attempts to work with all parties to resolve outstanding problems and concerns.

Representative Bruce also commended Mr. McCabe for the fine job he is doing at the Commission.

This administrative regulation was amended to delete Sections 10, 11 and 12 because they related to requirements that were no longer applicable.

Justice Cabinet: Department of Corrections: Jail Standards for Full Service Facilities

Jack Damron and Robert Powell appeared before the Subcommittee representing the Department of Corrections. Mr. Powell stated that all of the proposed amendments to standards are based on recommendations from the Jail Standards Commission, and all are less stringent than previously promulgated administrative regulations.

The following group of administrative regulations were amended to comply with the drafting requirements of KRS Chapter 13A, including deletion of an unnecessary statutory authority reference, the insertion of the word "administrative" before the word "regulation", putting definitions in alphabetical order, grammatical corrections, rewording for clarity, and inserting required KRS Chapter 13A language for incorporated material.

501 KAR 3:010. Definitions.

501 KAR 3:020. Administration; management.

501 KAR 3:050. Physical plant.

501 KAR 3:060. Security; control.

501 KAR 3:100. Food services.

501 KAR 3:140. Inmate rights. Senator Preston asked if the staff review question concerning calls had been addressed, and specifically asked how long of a delay is involved if the initial phone call to an attorney or family member is delayed until after processing and the inmate is in a housing unit. Senator Preston was advised that the amendment clarified and specified the actual use of a telephone in the housing area. Mr. Powell said that the delay was not long and was typically not more than fifteen minutes. Representative Bruce asked the Department to monitor this. Senator Preston asked if the calls were collect calls. Mr. Powell said that when the calls are made in the housing area, all calls, even local ones, are collect. Senator Preston asked if that interferes with an inmate's right to contact an attorney. Mr. Powell said that inmates typically call a family member first, but that a person has the right to keep calling until at least one call is completed.

Office of the Secretary

501 KAR 6:020 (& E). Corrections policies and procedures. This administrative regulation was amended not only to comply with KRS Chapter 13A drafting requirements, but to amend CPP.17-01-01, Inmate Personal Property, to allow only clear plastic electronic items.

Restricted Custody Center

501 KAR 7:010. Definitions.

501 KAR 7:050. Physical plant.

Jail Standards for Counties Not Housing Class D Felons

501 KAR 13:010. Life safety issues.

Education Professional Standards Board

704 KAR 20:690. Kentucky Teacher Internship Program. Rita Osborne, Division of Testing and Internship, Office of Teacher Educational Certification, stated that: (1) this administrative regulation outlined procedures for the new teacher internship program; (2) the Department repealed 704 KAR 20:320 because the program had been updated considerably; (3) this administrative regulation: (a)

focuses on new teacher standards, and more completely outlines what is expected of interns; (b) designates a 4 member committee to hear complaints by interns; (c) provides who will make up the 4 member committee and what the committee will do; (d) outlines who will serve on the committee for schools that do not have a principal; and (e) grants interns a right of appeal.

In response to questions from Representative Bruce, Ms Osborne stated that: (1) while interns had a right of appeal under the repealed administrative regulation, there was no complaint committee established; (3) this new procedure guarantees fairness for all concerned.

Representative Lee asked if this committee provides due process to those who file complaints. Kevin Noland stated that due process is guaranteed because the intern can appeal the decision of the committee to the Kentucky Department of Education for a full due process hearing pursuant to KRS Chapter 13B.

Senator Kafoglis stated that: (1) while the Regulatory Impact Analysis provides that \$4 million had been previously allocated in the budget, it also provides that an additional \$4 million has been allocated in the new budget; and (2) he was unsure whether the Department was requesting \$4 million or \$8 million. Ms Osborne stated that: (1) the Department is requesting a total of \$4 million; (2) \$3 million had been previously allocated; (3) the Department is requesting an additional \$1 million, bringing the total to \$4 million; and (4) the Executive Budget does not adequately reflect the needs of the Department for the coming biennium.

This administrative regulation was amended to: (1) clarify Sections 5(1)(a), (b), (c), 6, 7(2)(b) and (c) as requested in the initial staff review; and (2) move the material incorporated by reference to the last section of the administrative regulation.

Cabinet for Health Services: Department for Health Services: Kentucky Birth Surveillance Registry

902 KAR 19:010. Kentucky Birth Surveillance Registry. Patty Sewell and Sarah Wilding appeared before the Subcommittee representing the Department. Ms. Sewell stated that this administrative regulation is a mechanism to collect data concerning congenital anomalies, stillbirths and disabling conditions. Senator Kafoglis asked if there were national data collection on birth defects. Ms. Sewell said that the Center for Disease Control collects some, but no (there is no national data collection). This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

Cabinet for Families and Children: Department for Social Insurance: Public Assistance

904 KAR 2:410. Child collection and distribution. Pat Patterson and Steve Veno appeared before the Subcommittee representing the Department. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Auditor of Public Accounts: Audits

45 KAR 1:030. Audits of sheriff's tax settlements.

45 KAR 1:040. Audits of county fee officials.

45 KAR 1:050. Audits of fiscal courts.

Personnel Board

101 KAR 1:325. Probationary periods. Hanson Williams, Executive Director of the Board, stated that the amendments to this administrative regulation were: (1) primarily revisions to job titles; (2) revisions of the title in one job series; (3) deletions for series that have been abolished; (4) replacement of former series, ranger technician series that replaced the forest park series; and (5) extension of the probationary period for student development trainee, because it was believed that the job requirement for proficiency in sign language required twelve months for competency to be acquired.

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In response to questions by Senator Kafoglis, Mr. Williams stated that this administrative regulation: (1) did not generally increase probationary periods; (2) added certain titles or series to replace other titles or series, but did not increase the probationary period; and (3) the statement in the RIA that savings would be achieved from the extension of probationary periods was incorrect.

Finance and Administration Cabinet: Kentucky Private Activity Bond Allocation Committee

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

Personnel Pilot Programs

Barbara Carter, Cabinet for Human Resources, stated that the goal of the pilot project was to: (1) create a greater pool of diverse applicants from which to hire; and (2) have a hiring and selection process that more accurately matches the employee with his competency; (3) speed up hiring; (4) reward and retain experienced staff and decrease turnover; and (5) provide staff opportunity to implement create job enhancing projects.

Courtenay Carter, Division of Revenue Operations of the Revenue Cabinet, stated that the: (1) Division of Revenue Operations: (a) is the initial point of contact with the Revenue Cabinet for Kentucky taxpayers; (b) receives, opens, and sorts mail for 44 taxes, 8 fees, 15 program funds, and correspondence; (c) received correspondence that primarily contained remittances that must be timely processed in order to transmit money to the Treasury for deposit to the state's accounts; and (d) delivered support services with regard to tax payer registration, tax system maintenance, and records storage and retrieval; and (2) project is designed to: (a) improve service delivery to the citizens; (b) reward employees through salary incentives and job enrichment; and (c) establish a team-centered approach to returns processing and business registration, that will offer employees an opportunity to: 1. exercise initiative and be responsible for the improvement of services to the taxpayer; and 2. make decisions relating to the improvement of processing time, and be rewarded for their efforts.

Senator Preston: (1) stated that he had read articles relating to the delay in the deposit of checks; and (2) asked if the pilot project established by 200 KAR 22:110E would result in the speedier deposit of checks. Ms. Carter stated that: (1) in 95 percent of cases, checks usually were deposited within 24 hours; (b) in 5 percent of cases, problems arose due to taxpayer failure to include bills with checks; (2) the Cabinet hoped to improve this rate to 98 percent; (3) the pilot project would improve the rate by establishing a team approach, in which the process is completed in one area by a team, rather than carting the documents to various locations for each step in the process.

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.

200 KAR 22:110E. Comprehensive Employment Manual for the Kentucky Revenue Cabinet, Department of Administrative Services, Division of Revenue Operations for Use in the Pilot Personnel Program.

Kentucky Spinal Cord and Head Injury Research Board

202 KAR 4:010E. Spinal cord and head injury research program. Subcommittee staff stated that the Board had agreed to the staff review and suggested amendments and would incorporate them in the ordinary administrative regulation governing the research program that would replace this emergency administrative regulation.

Department of Fish and Wildlife Resources: Licensing

301 KAR 5:020E. License agent requirements and responsibilities.

301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses.

Department of Agriculture: Pesticides

302 KAR 31:025. Commercial structural pest control and fumigation. John McCauley and Don Lamar appeared on behalf of the Kentucky Department of Agriculture; Gary Blankenship appeared on behalf of the Kentucky Pest Control Association; and Mike Potter appeared on behalf of the University of Kentucky.

Department personnel stated that this administrative regulation: (1) sets minimum standards for termite treatment of homes; and (2) has been endorsed by the: (a) Kentucky Department of Agriculture; (b) Kentucky Pest Control Association; and (c) the University of Kentucky.

Senator Kafoglis stated that: (1) he was sure there was not a great deal of expertise on the Subcommittee in the area of treating homes for termites; (2) much of the language relating to treatment of homes has been changed; and (3) this subcommittee has no way of adequately evaluating the changes in this administrative regulation relating to treatment standards.

In response to questions by Senator Kafoglis, Department personnel stated that: (1) the Department originally intended to change a requirement for drilling and treating hollow concrete block foundations; (2) the prevailing industry standard is to inject the termiticide as close to the footer as possible; (3) prior to amendment, this existing administrative regulation required that the termiticide be applied at or above grade level; (4) due to additional information presented to the Kentucky Pest Control Advisory Board concerning the treatment requirements, the Board recommended that treatment of hollow block foundations be eliminated entirely because the new chemicals do not offer continuing protection against termites; (6) drilling and treating hollow block foundations is: (a) a waste of money; and (b) introduces unnecessary chemicals into the environment; (7) eliminating the drilling and treating requirement may reduce the cost of treatment to consumers; (8) some companies still intend to drill and treat the foundation.

In response to questions from Senator Kafoglis, Mr. Blankenship stated that: (1) whether a company drills and treats hollow block foundations is really a judgment call based upon what the manufacturer says about the persistence of the chemical; (2) opinions differ on whether the block foundation should be treated at all; (3) drilling and treating was certainly more advisable when more potent chemicals were available; (4) the chemicals used today: (a) have no long term residual effect in the block foundation; and (b) will not prevent termites from coming through the block; (5) under current manufacturers recommendations, treating block foundations may be done if the situation warrants.

Senator Kafoglis asked what assurances the homeowner has that his home is properly treated if he contracts with a pest control company. Mr. Blankenship stated that: (1) treatment of the block foundation is only one small portion of the overall treatment; (2) soil around the outside perimeter of the home is to be treated; (3) attached concrete slabs are to be treated; (4) if there is a crawl space, the soil around the inside of the crawl space must be treated; (5) in most cases, a chemical barrier is applied to both the inside and outside of the home; (6) a block foundation is treated to prevent entry of termites through a crack in the footer; and (7) since the chemicals currently being used do not have any residual effect on the concrete after a period of time, treatment of concrete block is no longer effective.

Senator Kafoglis stated that, in his opinion, "the pest control industry does not have the greatest reputation in the world.

In response to questions from Senator Kafoglis, Department personnel stated that: (1) the Department inspects homes if there has been a complaint about a company; (2) Department inspectors are located throughout the state; and (3) the Department follows up inspections of treatments.

In response to questions from Representative Bruce, Department personnel stated that the penalty for violation of the structural pest control statute varies depending upon the severity of the violation.

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Representative Bruce asked Mr. Potter to state his position concerning the proposed amendments to this administrative regulation.

Mr. Potter stated that: (1) he an associate extension professor of entomology at the University of Kentucky with a specialty in the area of termite control; (2) he agreed with Mr. Blankenship's statements concerning the treatment of homes for termites; (3) treatment methods have changed substantially in the last 6 years since chlordane can no longer be used; (4) chlordane is a very persistent material inside concrete block; (5) there are many elements to a quality termite treatment, and probably the least critical element is the drilling and treating of hollow block foundations; (6) termiticides on the market today have no persistence in the hollow block cavities; (7) all termiticides currently in use have advisory language on the label which gives discretion to the applicator concerning the treatment of hollow block voids; (8) if the applicator suspects there is a crack in the footer, treatment of the hollow block might be justified; (9) there are a number of good reasons for not treating the hollow block in every case: (a) the odor of the product can seep up into the structure; and (b) the Department spends a great deal of its time checking to see that the holes are drilled every 18 inches when it could be examining other aspects of a quality termite treatment.

Representative Bruce asked if there was a program to inform consumers about the elements of a quality termite treatment.

Department personnel responded that: (1) the Department inspects termite treatments done by the various companies; (2) the most effective thing the Department can do in the future is see that the public is adequately informed about proper termite treatment methods; (3) an educated consumer is much less likely to fall prey to an unscrupulous businessman; and (4) the most frequently used chemical to treat homes today is Durasban TC.

In response to a question from Senator Kafoglis, Mr. Potter stated that: (1) it would be an excellent idea for the Department to prepare a consumer guide that advises the public about the elements of a proper termite treatment; (2) there is a great deal of misunderstanding about the subject; and (3) the University would be willing to work with the Department to prepare such a pamphlet.

The Subcommittee approved a motion instructing Subcommittee staff to prepare a letter for the Chairman's signature addressing the need for the Department to prepare an information bulletin for consumers.

Kentucky Board of Education: Office of District Support: School Terms, Attendance and Operation

702 KAR 7:065E. Designation of agent to manage high school interscholastic athletics. Kevin Noland, General Counsel, Kentucky Department of Education appeared on behalf of the Department and stated that: (1) this administrative regulation is filed every year by the State Board of Education; (2) the Board is required by statute to approve the by-laws of the Kentucky High School Athletics Association (KHSAA) as a part of KHSAA's designation as the agent to manage interscholastic athletics; (3) the Board initially had some concerns about the by-laws of the KHSAA and asked that certain by-laws be rewritten; and (4) filing an emergency administrative regulation was necessary because the State Board did not approve the by-laws until December, 1995.

Education Professional Standards Board

704 KAR 20:084E. Interdisciplinary early childhood education, birth to primary.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020. Parts or materials list. In response to questions from Senator Kafoglis, Cabinet personnel stated that: (1) the "EZ Trap adaptor" is a transition fitting to be used between plastic PVC pipe and the chrome traps under the sink; (2) there has never been a transition fitting that made a professional looking job; (3) an individual from the mountains of Eastern Kentucky invented this fitting, had it

tested, and is ready to put it on the market; and (4) the cost of the fitting will probably be about \$1.50 more than the conventional transition fitting.

815 KAR 20:090. Soil, waste and vent systems.

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 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 Lottery Corporation

202 KAR 3:040. Internal audit procedures.

Tourism Cabinet: Department of Travel Development

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

Department of Agriculture: Pesticides

302 KAR 31:040. Storage and handling of pesticides and fertilizers for commercial agricultural storage facilities.

Kentucky Board of Education: Office of District Support: School Administration and Finance

702 KAR 3:270E. SEEK funding formula.

702 KAR 3:280. School district Medicaid providers. Kevin Noland, General Counsel, Kentucky Department of Education, appeared on behalf of the Department, and requested that this administrative regulation be deferred.

Representative Lee stated that: (1) this administrative regulation related to legislation enacted in 1994; (2) assurances had been given that this program would be in place by the start of the 1995-96 school year, but the program was not implemented in part because of Federal requirements.

Mr. Noland stated that: (1) the Cabinet for Human Resources (CHR) is required to promulgate an administrative regulation to implement the program; (2) CHR requested that the Department promulgate this administrative regulation so local districts would be aware that they were required to provide matching funds for the federal medicaid dollars; (3) the Department has been holding this administrative regulation because it is waiting for CHR to promulgate its administrative regulation.

Senator Bradley asked Subcommittee staff what would happen if an administrative regulation is deferred: (a) until the General Assembly adjourns; (2) throughout the Session, and not found deficient.

Subcommittee staff stated that KRS 13A.333(4) provides that an administrative regulation deferred through the Session and subsequently found deficient expires on adjournment of the Session.

Senator Bradley asked Subcommittee staff if agencies hold administrative regulations until after a Session so that they will not expire. Subcommittee staff stated that: (1) many administrative regulations are filed upon adjournment of the General Assembly; and (2) most of these administrative regulations appear to be filed as a result of new laws being passed.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:317E. Special industries.

803 KAR 2:404E. Personal protective and life saving equipment.

803 KAR 2:412E. Fall protection.

Cabinet for Families and Children: Department for Social Insurance: Public Assistance

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

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Department for Social Services: Child Welfare

905 KAR 1:360E. Private child care levels of care.

Cabinet for Health Services: 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 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities (AIS-MR-DD).

907 KAR 1:505E. Psychiatric residential treatment facility services.

907 KAR 1:510E. Payments for psychiatric residential treatment facility services.

907 KAR 1:675E. Program integrity.

907 KAR 1:677E. Medicaid recipient lock-in.

Department for Mental Health and Mental Retardation: Substance Abuse

908 KAR 1:300. Chemical dependency program evaluation.

OTHER BUSINESS

Department of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:230. Licensing requirements for administrators. Robin Gwen appeared on behalf of the Department of Insurance; and Mr. Timothy Davis, Davis and Associates, spoke against the administrative regulation.

Representative Lee stated that: (1) he requested the Subcommittee to reconsider this administrative regulation after receiving complaints; (2) this administrative regulation appears to be neither reasonable nor understandable; (2) based on the problems his constituent has had complying with this administrative regulation, it also appears that the Department does not understand its own administrative regulation.

Mr. Davis stated that: (1) he owns a financial service company in Elizabethtown, Kentucky; (2) the company also does business as Kentucky Care and Trust, a Third Party Administration company specializing in single employer self-funding Employee Retirement Income Security Act (ERISA) plans; (3) in early October 1995, he received a letter from the Department stating that: (a) any newly licensed third party administrators (TPAs) must prove financial responsibility by cash, bond, or liability policy of no less than \$50,000; (b) for corporate administrators the cash, bond or liability policy shall not be less than 10% of the amount of total funds handled by the administrator rounded to the nearest \$10,000 or \$50,000, whichever is greater; (c) the amount of cash, bond, or liability policy shall not exceed \$1 million; (d) effective November 30, 1995, all currently licensed TPAs must have this policy in place to avoid suspension of license; (4) although it was unclear what was required by the Department, several attempts were made to obtain some type of bond; (5) several other states that deal with this type of problem were also consulted; (6) Carla Montgomery, counsel for the Department was consulted; (7) Ms. Montgomery advised him by letter that administrators could procure a fidelity bond to meet the requirements of this administrative regulation; (8) a fidelity bond is an employee dishonesty bond, and therefore would be inappropriate as a TPA bond pursuant to this administrative regulation; (9) a fidelity bond was purchased however pursuant to the Department's advice; (10) many states allow fidelity bonds for this type of coverage; (11) in December, 1995, a letter was received from the Department stating that: (a) all currently licensed administrators shall demonstrate financial responsibility; (b) the Department had not received the appropriate filing pursuant to 806 KAR 9:230; and (c) his license would be suspended on January 12, 1996; (12) another call was placed to the Department, and on January 19 another letter was received requesting verification that the bond in place would cover all the requirements of this administrative regulation; (13) Section 5 of this administrative

regulation requires that the bond cover: (a) violation of or failure to comply with any applicable requirement of the Kentucky Insurance Code; (b) misplacement, misapplication, or misappropriation of funds received by it; (c) fraud or dishonesty committed by the administrator in the administration of its duties; (d) theft, forgery, or alteration of claims, premiums, or assets; and (e) negligence by the administrator; (13) it is impossible to obtain a bond, or error and omission insurance, that would cover all the requirements in this administrative regulation; (14) on January 25, a letter was written to Ms. Montgomery which stated that: (a) 37 states require TPAs to be licensed; (b) 16 states do not require licensure; and (c) 22 states provide exemptions for TPAs that administer only single employer, self-funded ERISA plans.

Ms. Gwen stated that: (1) she apologized that Mr. Davis appeared to have gotten the run around from the Department; (2) some members of the Department thought that a fidelity bond in the amounts prescribed by this administrative regulation would cover all the requirements; (3) after the letter was sent to Mr. Davis, it became apparent that the fidelity bond would only cover criminal acts and not negligence; (4) there are currently 253 corporations and 515 individuals licensed as TPAs; (5) the Department now believes it will take both a fidelity bond and an errors and omissions liability policy to comply with the provisions of this administrative regulation.

In response to questions from Representative Lee, Ms. Gwen stated that: (1) the Department became aware that the statute which was enacted in 1986 required TPAs to demonstrate financial responsibility; (2) there was no standard in place for determining how TPAs would meet financial responsibility requirements until this administrative regulation went into effect in August, 1995; (3) Department officials became uneasy about the fact that there was no requirement; (4) there were problems with the handling of premiums by TPAs; (5) the average of the premiums collected by a TPA is \$548,000, and the average of the claims paid out by TPAs is \$734,000; (7) sometimes TPAs collect as much \$8 million, and pay out claims of as much as \$14 million; (8) sometimes there are problems with TPAs remaining solvent; (9) as a protection for the consumer, the Department felt that a standard established by administrative regulation was required; (10) prior to the promulgation of this administrative regulation, meetings were held with financial standards experts and other state laws were reviewed; (11) in discussing the matter with other divisions in the Department, it was determined that there might be problems being able to obtain appropriate bond requirements.

Representative Lee stated that: (1) he began calling the Department in September, 1995; (2) many calls were made to the Department, and the requirements changed with every call; (3) this administrative regulation is being reconsidered because the Department was unable to provide objective requirements for compliance; (4) even if the bond or policy required was available, it would be cost prohibitive to small TPAs who handle no funds in cash; (5) it seems strange that the Department waited 9 years to decide that consumers were not being protected; and (6) after having failed to establish a requirement for 9 years, it is inappropriate for the Department to send a letter stating that the TPAs license will be suspended in a matter of days if the appropriate bond is not procured.

Ms. Gwen stated that the Department: (1) appears to be providing incorrect information to the public; and (2) wants to work with the General Assembly to provide a fair and reasonable administrative regulation that protects consumers and the regulated community.

The Subcommittee approved a motion by Representative Lee to find this administrative regulation deficient: (1) for the reasons stated in the discussion of this administrative regulation; and (2) because this administrative regulation is not reasonable as required by KRS 304.2-110.

The Subcommittee adjourned at 11:45 p.m. until March 4, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

1996 REGULAR SESSION HOUSE TRANSPORTATION COMMITTEE Meeting of January 18, 1996

The following administrative regulations were available for consideration by the House Committee on Transportation during its meeting of January 22, 1996, having been referred to the Committee on January 12, 1996, pursuant to KRS 13A.290(6):

603 KAR 4:035

603 KAR 5:230

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 18, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

1996 REGULAR SESSION SENATE TRANSPORTATION COMMITTEE Meeting of January 22, 1996

The following administrative regulations were available for consideration by the Senate Committee on Transportation during its meeting of January 22, 1996, having been referred to the Committee on January 12, 1996, pursuant to KRS 13A.290(6):

603 KAR 4:035

603 KAR 5:230

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced

administrative regulations is reflected in the minutes of the January 22, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS Meeting of January 25, 1996

The following administrative regulations were available for consideration by the House Committee on Agriculture and Small Business during its meeting of January 25, 1996, having been referred to the Committee on January 12, 1996, pursuant to KRS 13A.290(6):

302 KAR 20:081

302 KAR 20:115 (&E)

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 25, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of January 23, 1996

The following administrative regulations were available for consideration by the Senate Committee on Licensing and Occupations during its meeting of January 23, 1996, having been referred to the Committee on January 12, 1996, pursuant to KRS 13A.290(6): 201 KAR 12:082.

The following administrative regulations were found to be sufficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative

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regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the first Licensing and Occupation meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of January 25, 1996

The following administrative regulations were available for consideration by the House Committee on Licensing and Occupations during its meeting of January 25, 1996, having been referred to the Committee on January 12, 1996, pursuant to KRS 13A.290(6): 201 KAR 12:082.

The following administrative regulations were found to be sufficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the first Licensing and Occupation meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS Meeting of January 24, 1996

The following administrative regulation was available for consideration by the House Committee on Elections and Constitutional Amendments during its meeting of January 24, 1996, having been referred to the Committee on January 12, 1996, pursuant to KRS 13A.290(6):

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

The following administrative regulation, as amended by the Administrative Regulations Review Subcommittee at its January 10, 1996 meeting, was approved at the Committee meeting pursuant to KRS 13A.320:

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

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of its January 24, 1996 meeting, which are hereby incorporated by reference.

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Meeting of February 15, 1996

The following administrative regulations were available for consideration by the Senate Committee on Agriculture and Natural Resources during its meeting of February 15, 1996, having been referred to the Committee on February 6, pursuant to KRS 13A.290(6):

U.K. College of Agriculture
12 KAR 1:115
Department of Agriculture
302 KAR 31:025
Department of Fish and Wildlife Resources
301 KAR 5:020E
301 KAR 5:030E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 15, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates 12

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 113

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 121

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

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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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VOLUME 22

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

9 KAR 1:021E	214	7-11-95	502 KAR 45:065E	709	8-30-95
Expired		1-18-96	Replaced	960	1-8-96
11 KAR 8:030E	215	7-12-95	502 KAR 45:075E	710	8-30-95
Expired		1-18-96	Replaced	961	1-8-96
31 KAR 5:020E	882	10-12-95	502 KAR 45:085E	711	8-30-95
Replaced	1452	2-12-96	Replaced	1306	1-8-96
32 KAR 1:160E	694	8-30-95	502 KAR 45:145E	570	8-1-95
32 KAR 1:170E	883	10-10-95	Replaced	1306	1-8-96
101 KAR 2:100E	217	7-14-95	502 KAR 45:150E	712	8-30-95
Expired		1-18-96	Replaced	1307	1-8-96
101 KAR 3:010E	223	7-14-95	702 KAR 3:245E	571	8-15-95
Expired		1-18-96	Replaced	990	2-12-96
200 KAR 22:060E	20	6-15-95	702 KAR 3:246E	573	8-15-95
Replaced	415	10-13-95	Replaced	1005	2-12-96
200 KAR 22:090E	884	10-13-95	702 KAR 3:270E	1267	12-15-95
Replaced	1452	2-12-96	702 KAR 7:065E	1269	12-15-95
200 KAR 22:100E	1261	11-30-95	704 KAR 20:084E	1271	12-4-95
200 KAR 22:110E	1262	12-11-95	780 KAR 2:140E	227	7-5-94
200 KAR 22:120E	1553	1-12-96	Replaced	730	10-5-95
201 KAR 11:400E	1446	12-22-95	787 KAR 1:010E	229	6-22-95
201 KAR 20:070E	1554	1-25-96	Replaced	452	11-6-95
202 KAR 4:010E	1050	11-6-95	787 KAR 1:020E	230	6-22-95
301 KAR 2:221E	1051	11-3-95	Replaced	454	11-6-95
301 KAR 2:222E	1054	11-3-95	787 KAR 1:030E	230	6-22-95
301 KAR 2:223E	1057	11-3-95	Replaced	908	11-6-95
301 KAR 2:224E	1059	11-3-95	787 KAR 1:040E	230	6-22-95
301 KAR 2:225E	695	8-23-95	Replaced	456	11-6-95
Replaced	1174	2-12-96	787 KAR 1:050E	231	6-22-95
301 KAR 5:001E	697	9-14-95	Replaced	457	11-6-96
Replaced	1456	2-12-96	787 KAR 1:060E	231	6-22-95
301 KAR 5:010E	698	9-14-95	Replaced	908	11-6-95
Replaced	1457	2-12-96	787 KAR 1:070E	232	6-22-95
301 KAR 5:020E	1263	12-11-95	Replaced	909	11-6-95
301 KAR 5:030E	1265	12-11-95	787 KAR 1:080E	232	6-22-95
302 KAR 20:115E	569	7-28-95	Replaced	461	11-6-95
Replaced	1179	2-12-96	787 KAR 1:090E	233	6-22-95
415 KAR 1:114E	700	8-16-95	Replaced	909	11-6-95
500 KAR 6:110E	1555	2-14-96	787 KAR 1:100E	234	6-22-95
500 KAR 6:150E	1558	2-14-96	Replaced	910	11-6-95
500 KAR 6:190E	1559	2-14-96	787 KAR 1:110E	234	6-22-95
500 KAR 6:200E	1560	2-14-96	Replaced	466	11-6-95
501 KAR 6:020E	1061	11-15-95	787 KAR 1:120E	237	6-22-95
502 KAR 45:005E	703	8-30-95	Replaced	470	11-6-95
Replaced	1305	1-8-96	787 KAR 1:130E	237	6-22-95
502 KAR 45:015E	704	8-30-95	Expired (ordinary withdrawn)		6-22-95
Replaced	955	1-8-96	787 KAR 1:140E	237	6-22-95
502 KAR 45:025E	705	8-30-95	Replaced	472	11-6-95
Replaced	1462	2-12-96	787 KAR 1:150E	238	6-22-95
502 KAR 45:035E	706	8-30-95	Replaced	473	11-6-95
Replaced	957	1-8-96	787 KAR 1:160E	239	6-22-95
502 KAR 45:045E	707	8-30-95	Replaced	475	11-6-95
Replaced	1305	1-8-96	787 KAR 1:170E	239	6-22-95
502 KAR 45:055E	708	8-30-95	Replaced	476	11-6-95
Replaced	1305	1-8-96	787 KAR 1:180E	240	6-22-95
			Replaced	478	11-6-95
			787 KAR 1:190E	241	6-22-95
			Replaced	911	11-6-95
			787 KAR 1:200E	241	6-22-95
			Replaced	481	11-6-95
			787 KAR 1:210E	242	6-22-95
			Replaced	482	11-6-95

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
787 KAR 1:220E	242	6-22-95	907 KAR 1:015E	266	6-30-95
Replaced	483	11-6-95	Withdrawn		8-10-95
787 KAR 1:230E	243	6-22-95	907 KAR 1:060E	267	6-30-95
Replaced	484	11-6-95	Expired		1-18-96
787 KAR 1:240E	243	6-22-95	Resubmitted	1576	1-18-96
Replaced	911	11-6-95	907 KAR 1:061E	269	6-30-95
787 KAR 1:250E	244	6-22-95	Expired		1-18-96
Replaced	487	11-6-95	Resubmitted	1578	1-18-96
787 KAR 1:260E	244	6-22-95	907 KAR 1:140E	895	9-27-95
Replaced	488	11-6-95	907 KAR 1:505E	1071	11-6-95
787 KAR 1:270E	245	6-22-95	907 KAR 1:510E	1073	11-6-95
Replaced	911	11-6-95	907 KAR 1:675E	1295	12-5-95
787 KAR 1:280E	245	6-22-95	907 KAR 1:677E	1299	12-5-95
Replaced	491	11-6-95	908 KAR 1:340E	1582	1-30-96
787 KAR 1:290E	245	6-22-95	909 KAR 1:021E	22	6-14-95
Replaced	912	11-6-95	Replaced	934	11-15-95
787 KAR 1:300E	246	6-22-95	909 KAR 1:055E	23	6-14-95
Replaced	493	11-6-95	Replaced	662	11-15-95
787 KAR 1:310E	246	6-22-95	909 KAR 1:100E	578	8-15-95
Replaced	495	11-6-95	Replaced	1009	1-8-96
787 KAR 2:010E	247	6-22-95			
Replaced	496	11-6-95	ORDINARY ADMINISTRATIVE REGULATIONS:		
787 KAR 2:020E	248	6-22-95	2 KAR 2:040	1509	
Replaced	912	11-6-95	9 KAR 1:010		
787 KAR 2:030E	248	6-22-95	As Amended	273	
Replaced	912	11-6-95	As Amended	583	7-26-95
788 KAR 2:010E	249	6-22-95	9 KAR 1:015		
Replaced	1082	12-7-95	As Amended	25	7-6-95
803 KAR 2:317E	1273	12-6-95	9 KAR 1:020		
803 KAR 2:320E	252	6-30-95	Repealed	214	7-11-95
Expired		1-18-96	9 KAR 1:030		
Resubmitted	1562	2-15-96	As Amended	26	7-6-95
803 KAR 2:403E	255	6-30-95	9 KAR 1:035		
Expired		1-18-96	As Amended	30	7-6-95
803 KAR 2:404E	1275	12-6-95	9 KAR 1:040		
803 KAR 2:412E	1283	12-6-95	As Amended	273	
803 KAR 2:425E	257	6-30-95	As Amended	583	7-26-95
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Resubmitted	1567	2-15-96	Amended	97	
803 KAR 2:500E	259	6-30-95	As Amended	584	9-7-95
Expired		1-18-96	11 KAR 12:060		
Resubmitted	1569	2-15-96	As Amended	30	7-6-95
804 KAR 4:320E	575	7-25-95	11 KAR 12:070		
Replaced	1008	1-8-96	As Amended	31	7-6-95
815 KAR 8:040E	21	6-6-95	12 KAR 1:115		
Replaced	915	11-6-95	Amended	1324	2-15-96
903 KAR 5:001E	713	8-28-95	13 KAR 2:045		
904 KAR 2:015E	1571	1-30-96	Amended	1656	
904 KAR 2:016E	1064	11-15-94	15 KAR 1:040	125	
Withdrawn		12-5-95	As Amended	587	9-7-95
Resubmitted	1285	12-5-95	31 KAR 4:061	1745	
904 KAR 2:116E	1447	1-4-96	31 KAR 4:070		
904 KAR 2:460E	576	8-7-95	Amended	1662	
Expired		2-16-96	31 KAR 4:100		
905 KAR 1:360E	1292	11-22-95	As Amended	274	7-26-95
907 KAR 1:009E	261	6-30-95	31 KAR 4:110		
Withdrawn		9-19-95	As Amended	274	7-26-95
Resubmitted	885	9-19-95	31 KAR 5:020		
907 KAR 1:010E	262	6-30-95	Amended	1088	
Withdrawn		9-19-95	As Amended	1452	2-12-96
Resubmitted	886	9-19-95	32 KAR 2:210	814	
907 KAR 1:013E	887	9-28-95	As Amended	1302	1-8-96
907 KAR 1:014E	264	6-30-95	45 KAR 1:030		
Withdrawn		8-10-95	Amended	1325	

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45 KAR 1:050 Amended	1329		201 KAR 9:175 Amended	1483	
101 KAR 1:325 Amended	1332		201 KAR 11:400 As Amended	717	
101 KAR 2:036 Amended	1663		Reprint	852	10-13-95
101 KAR 2:100 Amended	1089		201 KAR 12:082 Amended	613	
Amended	1610		As Amended	1452	1-25-96
101 KAR 3:010 Amended	1094		201 KAR 16:050 Amended	936	
Amended	1616		As Amended	1302	1-8-96
101 KAR 3:045 Amended	1666		201 KAR 18:129	1173	
103 KAR 16:190 Amended	127		201 KAR 19:035 Amended	1668	
Withdrawn	761	10-18-95	201 KAR 20:057 Amended	305	9-20-95
105 KAR 1:210 Amended	775	12-7-95	201 KAR 20:070 Amended	1487	
105 KAR 1:215 Amended	777	12-7-95	Withdrawn		1-18-96
106 KAR 1:091 Amended	606		201 KAR 20:162 Amended	306	9-20-95
As Amended	898	10-11-95	201 KAR 20:215 Amended	1337	
106 KAR 1:131 Amended	609		As Amended	1594	
As Amended	900	10-11-95	201 KAR 20:240 Amended	109	8-16-95
200 KAR 2:006 Amended	779	12-7-95	Withdrawn		
200 KAR 5:314	1510		Amended	1338	
200 KAR 15:010 Amended	101		As Amended	1595	
As Amended	715	9-28-95	201 KAR 20:410	418	9-20-95
Amended	1334		201 KAR 22:070 Amended	615	
200 KAR 17:050 Amended	104		As Amended	1975	11-15-95
As Amended	589	8-24-95	201 KAR 30:040 Amended	1669	
200 KAR 19:010 Recodified as 803 KAR 30:020		7-24-95	201 KAR 30:050 As Amended	277	8-10-95
200 KAR 20:010 As Amended	32	7-6-95	201 KAR 30:120 As Amended	279	8-10-95
200 KAR 22:020 As Amended	33	7-6-95	201 KAR 31:050 As Amended	998	
200 KAR 22:030	412	10-13-95	As Amended	1303	1-8-96
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200 KAR 22:050	414	10-13-95	As Amended	903	10-19-95
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200 KAR 22:110	1512		As Amended	1304	1-8-96
201 KAR 1:300 As Amended	275	8-10-95	201 KAR 33:020 As Amended	999	
201 KAR 7:040 Amended	935		As Amended	1304	1-8-96
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201 KAR 8:220 Amended	107	8-16-95	As Amended	1455	2-12-96
201 KAR 8:277 Amended	108	8-16-95	201 KAR 33:040 As Amended	1003	
			As Amended	1305	1-8-96
			202 KAR 3:020	1746	
			202 KAR 3:040	1395	
			202 KAR 4:010	1747	
			300 KAR 1:010	635	
			301 KAR 1:015 Amended	308	
			As Amended	718	10-11-95

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Amended	1488		Amended	918	11-14-95
301 KAR 1:085			401 KAR 42:011		
Amended	309	10-11-95	Amended	315	11-14-95
301 KAR 1:201			401 KAR 42:020		
Amended	312	10-11-95	Amended	318	
301 KAR 2:044			Amended	920	11-14-95
Repealed	695	8-23-95	401 KAR 42:040		
301 KAR 2:049			Amended	321	
Amended	1670		Amended	921	11-14-95
301 KAR 2:221			401 KAR 42:060		
Amended	1673		Amended	323	
301 KAR 2:222			Amended	921	11-14-95
Amended	1675		401 KAR 42:070		
301 KAR 2:223			Amended	327	
Amended	1679		Amended	922	11-14-95
301 KAR 2:224			401 KAR 42:071	432	
Amended	1681		Amended	924	11-14-95
301 KAR 2:225	1174	2-12-96	401 KAR 42:080		
301 KAR 2:251			Amended	331	
Amended	1491		Amended	924	11-14-95
301 KAR 5:001	1176		401 KAR 42:090		
As Amended	1456	2-12-96	Amended	335	11-14-95
301 KAR 5:010	1177		401 KAR 42:200		
As Amended	1457	2-12-96	Amended	337	11-14-95
301 KAR 5:020	1748		401 KAR 50:010		
301 KAR 5:030	1750		Amended	1686	
301 KAR 6:001			401 KAR 50:031	817	
Amended	1683		Amended	1315	
301 KAR 6:020			As Amended	1458	2-12-96
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301 KAR 6:050	816		401 KAR 50:065	434	10-11-95
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301 KAR 10:010			Amended	1691	
Repealed	92	7-12-95	401 KAR 59:001		
302 KAR 15:010			Amended	1695	
As Amended	33	6-14-95	401 KAR 59:430		
302 KAR 20:076	422	10-11-95	Recodified as 401 KAR 60:042		10-18-95
302 KAR 20:080			401 KAR 59:435		
Repealed	1179	2-12-96	Recodified as 401 KAR 60:043		10-18-95
302 KAR 20:081	1179	2-12-96	401 KAR 60:042		
302 KAR 20:115	1179	2-12-96	Recodified from 401 KAR 59:430		10-18-95
302 KAR 31:015			401 KAR 60:043		
As Amended	36	6-14-95	Recodified from 401 KAR 59:435		10-18-95
302 KAR 31:025			401 KAR 61:001		
Amended	1339	2-15-96	Amended	1699	
302 KAR 31:040	1397		401 KAR 63:001		
Withdrawn		2-6-96	Amended	1703	
302 KAR 100:010	423	10-11-95	401 KAR 65:001		
302 KAR 100:020	424	10-11-95	Amended	1707	
307 KAR 1:030	133		401 KAR 100:010		
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307 KAR 2:010			Amended	598	10-11-95
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307 KAR 3:010			Amended	1343	
As Amended	40	7-6-95	As Amended	1596	
307 KAR 4:010	135		416 KAR 1:010	142	8-24-95
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As Amended	720	8-17-95	Amended	92	7-12-95
401 KAR 5:030			418 KAR 1:020		
Amended	89		Amended	92	7-12-95
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			Amended	93	7-12-95

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Amended	94	7-12-95	Amended	948	1-8-96
418 KAR 1:070			Amended	1104	2-12-96
Amended	96	7-12-95	501 KAR 6:120		
500 KAR 11:001	146	9-7-95	As Amended	42	7-6-95
500 KAR 11:030	436	10-13-95	Amended	950	1-8-96
500 KAR 11:040	439	10-13-95	Amended	1105	2-12-96
500 KAR 11:050	441	10-13-95	501 KAR 6:130		
500 KAR 11:060	442	10-13-95	Amended	619	11-6-95
500 KAR 11:070	147	9-7-95	Amended	952	1-8-96
500 KAR 11:080	148	9-7-95	Amended	1107	2-12-96
Reprint	1030	9-7-95	Amended	1714	
500 KAR 11:090	149	9-7-95	501 KAR 6:140		
500 KAR 11:100	150	9-7-95	As Amended	43	7-6-95
501 KAR 2:020			Amended	1108	2-12-96
Amended	340		501 KAR 6:170	443	11-6-95
As Amended	905	11-6-95	Amended	953	1-8-96
501 KAR 2:040			501 KAR 7:010		
Amended	341		Amended	1359	
As Amended	905	11-6-95	As Amended	1599	
501 KAR 2:050			501 KAR 7:050		
Amended	342		Amended	1360	
As Amended	905	11-6-95	As Amended	1600	
501 KAR 2:060			501 KAR 13:010	1402	
Amended	343		As Amended	1601	
As Amended	1076	12-7-95	502 KAR 45:005		
501 KAR 3:010			Amended	954	
Amended	1346		As Amended	1305	1-8-96
As Amended	1598		502 KAR 45:015		
501 KAR 3:020			Amended	955	1-8-96
Amended	1347		502 KAR 45:025		
501 KAR 3:050			Amended	956	
Amended	1349		As Amended	1462	2-12-96
501 KAR 3:060			502 KAR 45:035		
Amended	1353		Amended	957	1-8-96
501 KAR 3:100			502 KAR 45:045		
Amended	1354		Amended	958	
501 KAR 3:140			As Amended	1305	1-8-96
Amended	1355		502 KAR 45:055		
As Amended	1598		Amended	959	
501 KAR 6:020			As Amended	1305	1-8-96
Amended	616	11-6-95	502 KAR 45:065		
Amended	783	12-7-95	Amended	960	1-8-96
Amended	1357		502 KAR 45:075		
Amended	1493		Amended	961	1-8-96
Amended	1710		502 KAR 45:085		
501 KAR 6:030			Amended	962	
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501 KAR 6:040			502 KAR 45:145	1004	
Amended	945	1-8-96	As Amended	1306	1-8-96
Amended	1099	2-12-96	502 KAR 45:150	1005	
Amended	1495		As Amended	1307	1-8-96
501 KAR 6:050			502 KAR 50:010		
Amended	785	12-7-95	Amended	1715	
501 KAR 6:060			600 KAR 1:120	821	12-7-95
Amended	1100	2-12-96	600 KAR 3:010		
Amended	1712		Amended	963	1-8-96
501 KAR 6:080			600 KAR 4:010		
Amended	344	10-13-95	Amended	1362	
501 KAR 6:090			Amended	1621	
Amended	946	1-8-96	600 KAR 5:010		
Amended	1102	2-12-96	Amended	302	10-3-95
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			600 KAR 6:020	1405	

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600 KAR 6:030	1406		702 KAR 7:010		
600 KAR 6:040	1407		Amended	626	11-2-95
Amended	1626		702 KAR 7:050		
600 KAR 6:050	1410		As Amended	45	7-6-95
Amended	1627		702 KAR 7:065		
600 KAR 6:060	1412		Amended	1728	
600 KAR 6:070	1414		702 KAR 7:080		
Amended	1628		Repealed	151	9-7-95
600 KAR 6:080	1419		702 KAR 7:081	151	9-7-95
Amended	1633		702 KAR 7:090		
601 KAR 1:005			Repealed	152	9-7-95
Amended	1716		702 KAR 7:091	152	9-7-95
601 KAR 1:025			704 KAR 3:470	152	9-7-95
Amended	981		704 KAR 20:055		
As Amended	1307	1-8-96	Repealed	153	9-7-95
601 KAR 1:029			704 KAR 20:056	153	9-7-95
Amended	1719		704 KAR 20:305		
601 KAR 1:030			As Amended	283	8-3-95
Amended	1720		704 KAR 20:510		
601 KAR 1:031			Amended	992	1-8-96
Amended	1724		704 KAR 20:690	1422	
601 KAR 1:040			As Amended	1602	
Amended	1725		735 KAR 1:010		
601 KAR 9:074			As Amended	48	7-6-95
Amended	345	10-3-95	735 KAR 1:020		
601 KAR 9:220	824	12-7-95	As Amended	50	7-6-95
601 KAR 12:070	444	10-3-95	750 KAR 1:010		
603 KAR 3:080			Amended	627	
Amended	1367		As Amended	906	11-2-95
Amended	1635		780 KAR 2:010		
603 KAR 4:035			Amended	353	
Amended	984		As Amended	722	10-5-95
Amended	1318		780 KAR 2:020		
As Amended	1463	1-22-96	Amended	354	
603 KAR 5:070			As Amended	722	10-5-95
Amended	620		780 KAR 2:021	445	10-5-95
As Amended	1077	11-1-95	780 KAR 2:030		
603 KAR 5:071			Amended	355	
Amended	624	11-1-95	As Amended	723	10-5-95
603 KAR 5:072			780 KAR 2:035	446	
Amended	348	10-3-95	As Amended	724	10-5-95
603 KAR 5:075			780 KAR 2:040		
Amended	786	12-7-95	Amended	357	
603 KAR 5:110			As Amended	724	10-5-95
Amended	350	10-3-95	780 KAR 2:045		
603 KAR 5:115			Repealed	445	10-5-95
Amended	789	1-8-96	780 KAR 2:050		
603 KAR 5:230			Repealed	445	10-5-95
Amended	1110	1-22-96	780 KAR 2:060		
603 KAR 5:301			Amended	358	
Amended	791	12-7-95	As Amended	725	10-5-95
701 KAR 5:076	1754		780 KAR 2:070		
701 KAR 5:110			Repealed	445	10-5-95
Amended	989	1-8-96	780 KAR 2:080		
702 KAR 1:140			Repealed	445	10-5-95
As Amended	45	7-6-95	780 KAR 2:090		
702 KAR 3:245			Amended	359	
Amended	990	2-12-96	As Amended	726	10-5-95
702 KAR 3:246	1005	2-12-96	780 KAR 2:100		
702 KAR 3:280	637		Amended	361	
Amended	925		As Amended	727	10-5-95
Withdrawn		2-8-96	780 KAR 2:110		
702 KAR 3:300	638	11-2-95	Amended	363	10-5-95

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780 KAR 2:120			780 KAR 7:070		
Amended	364		Amended	382	
As Amended	728	10-5-95	As Amended	740	10-5-95
780 KAR 2:130			780 KAR 8:010		10-5-95
Amended	365		Repealed	740	
As Amended	728	10-5-95	780 KAR 8:011	452	
780 KAR 2:140			As Amended	740	10-5-95
Amended	367		780 KAR 9:010		
As Amended	730	10-5-95	Repealed	825	12-7-95
780 KAR 2:150			780 KAR 9:030		
Repealed	445	10-5-95	Repealed	825	12-7-95
780 KAR 4:010			780 KAR 9:040		
Amended	369		Repealed	825	12-7-95
As Amended	731	10-5-95	780 KAR 9:050		
780 KAR 4:020			Repealed	825	12-7-95
Amended	371		780 KAR 9:060		
As Amended	732	10-5-95	Repealed	825	12-7-95
780 KAR 4:030	447		780 KAR 9:070		
As Amended	733	10-5-95	Repealed	825	12-7-95
780 KAR 4:040	448		780 KAR 9:080		
As Amended	733	10-5-95	Repealed	825	12-7-95
780 KAR 4:050	448		780 KAR 9:090		
As Amended	734	10-5-95	Repealed	825	12-7-95
780 KAR 4:060	449		780 KAR 9:100		
As Amended	734	10-5-95	Repealed	825	12-7-95
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		
As Amended	734	10-5-95	Repealed	825	12-7-95
780 KAR 5:030			780 KAR 9:131	825	12-7-95
Amended	374		781 KAR 1:040		
As Amended	735	10-5-95	Amended	111	10-5-95
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
As Amended	735	10-5-95	785 KAR 1:090	652	11-2-95
780 KAR 7:020			785 KAR 1:100	653	
Amended	378		As Amended	1081	12-7-95
As Amended	737	10-5-95	785 KAR 1:110	654	
780 KAR 7:030			As Amended	1081	12-7-95
Amended	379		787 KAR 1:010	452	11-6-95
As Amended	738	10-5-95	787 KAR 1:020	454	11-6-95
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
Repealed	739	10-5-95	787 KAR 1:050	457	11-6-95
780 KAR 7:036	451		787 KAR 1:060	459	
As Amended	739	10-5-95	As Amended	908	11-6-95
780 KAR 7:040			787 KAR 1:070	460	
Amended	380		As Amended	909	11-6-95
As Amended	739	10-5-95	787 KAR 1:080	461	11-6-95
780 KAR 7:050			787 KAR 1:090	463	
Repealed	739	10-5-95	As Amended	909	11-6-95
780 KAR 7:060			787 KAR 1:100	465	
Amended	381		As Amended	910	11-6-95
As Amended	739	10-5-95	787 KAR 1:110	466	11-6-95
			787 KAR 1:120	470	11-6-95

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787 KAR 1:160	475	11-6-95	Amended	1649	
787 KAR 1:170	476	11-6-95	806 KAR 3:160		
787 KAR 1:180	478	11-6-95	Amended	1741	
787 KAR 1:190	479		806 KAR 5:025	1755	
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787 KAR 1:200	481	11-6-95	Reprinted	1204	11-13-84
787 KAR 1:210	482	11-6-95	806 KAR 9:220		
787 KAR 1:220	483	11-6-95	As Amended	58	7-6-95
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787 KAR 1:260	488	11-6-95	806 KAR 47:020	155	9-7-95
787 KAR 1:270	490		806 KAR 47:030	157	9-7-95
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803 KAR 2:320			Amended	794	12-7-95
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Amended	1164		903 KAR 5:300		
Amended	1652		Repealed	713	8-28-95
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902 KAR 20:004			Repealed	713	8-28-95
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902 KAR 20:126			Repealed	713	8-28-95
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902 KAR 20:270			Repealed	713	8-28-95
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903 KAR 5:010			903 KAR 6:020		
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903 KAR 5:020			903 KAR 6:040		
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903 KAR 5:030			903 KAR 6:050		
Repealed	713	8-28-95	Repealed	713	8-28-95
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