ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on May 6, 1996. See **tentative agenda** beginning on page 1767 of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 6, 1996, 10 a.m.
Room 149, Capitol Annex

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

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GENERAL GOVERNMENT CABINET

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201 KAR 32:040. Compensation of board members.

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Kentucky Spinal Cord and Head Injury Research Program

202 KAR 4:010 (&E). Spinal Cord and Head Injury Research Program. (Deferred from April)

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Division for Air Quality

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401 KAR 50:033. Acid rain phase II application forms. (Not Amended After Hearing)

Air Quality - New Source Requirements; Nonattainment Areas

401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51. (Amended After Hearing)

Air Quality - New Source Standards

401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59. (Amended After Hearing)

Air Quality - Existing Source Standards

401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61. (Amended After Hearing)

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401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63. (Amended After Hearing)

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401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. (Amended After Hearing)

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Office of the Secretary

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501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:120. Blackburn Correctional Complex.

501 KAR 6:170. Green River Correctional Complex.

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Department of Vehicle Regulation

Division of Motor Carriers

601 KAR 1:005. Safety regulations. (Amended After Hearing)

601 KAR 1:029. Definitions relating to 601 KAR 1:030 through 601 KAR 1:145.
601 KAR 1:030. Hearings.
601 KAR 1:031. Procedure when no protest to notice of hearing is filed.
601 KAR 1:040. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission. (Repeals 601 KAR 1:085; 090; 105; 170)

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Department of Education

Education Professional Standards Board
704 KAR 20:084 (& E). Interdisciplinary early childhood education, birth to primary.
704 KAR 20:260. Junior Reserve Training Corps certification.
704 KAR 20:540. Professional certificate for administrator of pupil personnel services. (Repeal 704 KAR 20:100)
704 KAR 20:670. Kentucky teaching certificates.

LABOR CABINET

Occupational Safety and Health
803 KAR 2:320E. Air contaminants. (Deferred from April)
803 KAR 2:425E. Toxic and hazardous substances. (Deferred from April)
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Department for Medicaid Services

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Mental Health
908 KAR 2:060. Mental health and mental retardation manuals for funding instructions, program policies and standards, and reimbursement guidelines.

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.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Date: March 29, 1996
Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 5:130**, Student application.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 of the administrative regulation governing the subject matter listed above, particularly, the process by which a student may apply for a KHEAA Grant.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, May 30, 1996, at 10 a.m., at 1050 U.S. 127 South, 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 May 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to application for a KHEAA Grant is KRS 164.744(2), 164.753(4), 164.7535, 164.780 and 164.785.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:130, as follows: Section 1 of the above cited administrative regulation currently requires a student to complete and submit in accordance with the instructions provided the 1995-96 Free Application for Federal Student Aid (FAFSA) The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to require the submission of the 1996-97 Free Application for Federal Student Aid (FAFSA) to award grants for the upcoming 1996-97 academic year.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment is necessary to update the version of the Free Application for Federal Student Aid (FAFSA) that is used for the KHEAA Grant programs, consistent with its use for other programs of student financial assistance.

(d) The benefits expected from the administrative regulation are: The student can use a single application form for KHEAA grants and institutional and federal programs of student financial assistance at no processing cost to the student.

(e) The administrative regulation will be implemented as follows: The administrative regulation will require that a student complete and submit in accordance with the instructions provided the 1996-97 Free Application for Federal Student Aid (FAFSA) in order to be considered for a KHEAA Grant.

Date: March 29, 1996
Kentucky Higher Education Assistance Authority

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

(2) The Kentucky Higher Education Assistance Authority 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, May 30, 1996, at 10 a.m., at 1050 U.S. 127 South, 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 May 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to teacher scholarships is KRS 164.769(5) and (6)(f).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 8:030. It will delineate selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to award, disbursement and repayment of teacher scholarships.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation delineates selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program. This amendment is necessary to reflect changes in the program made by SB 152 enacted in the 1996 Regular Session of the General Assembly.

(d) The benefits expected from administrative regulation are: This administrative regulation delineates selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

(e) The administrative regulation will be implemented as follows: Teacher scholarships will be awarded first to qualified renewal applicants and then, to the extent that funds are available will be awarded to in order to those who have been unconditionally admitted to a teacher education program, then to those who are conditionally admitted to a teacher education program, then to those who have not yet been admitted but who meet standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028, and then to otherwise eligible applicants who do not yet meet those standards. Within the above groups, applicants, other than qualified renewal applicants, will be ranked in ascending order of expected family contribution (which is determined as the result of financial need analysis). Disbursement of scholarship awards will be made at the beginning of each academic term and require the recipient to execute a promissory note, agreeing to perform qualified teaching service or repay the scholarship. If the recipient becomes liable for repayment by failing to complete the eligible program of study or failing to render qualified teaching service, the entire unpaid balance of all scholarships becomes immediately due and payable by the recipient. However, the authority may permit monthly payments in accordance with an agreed repayment schedule.

Date: March 29, 1996

Kentucky Higher Education Assistance Authority

(1) The subject matter of the proposed administrative regulation is **11 KAR 12:050**, Substitution of a beneficiary (pertaining to the Kentucky Educational Savings Plan Trust).

(2) The Kentucky Higher Education Assistance Authority 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, May 30, 1996, at 10 a.m., at 1050 U.S. 127 South, 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 May 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Educational Savings Plan Trust is KRS 164A.325(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation 11 KAR 12:050. It will modify Section 1(4) of the administrative regulation by permitting a participant that has separate accounts for more than one beneficiary to substitute one of the existing beneficiaries on the account on which the other beneficiary was designated in lieu of requiring the participant to cancel one of the accounts and incur cancellation fees.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.330(7), (8) and 164A.340 establishes the statutory framework for the substitution of a beneficiary, and KRS 164A.325(5) provides, in pertinent part, that the trust may promulgate, impose and collect administrative fees and charges in connection with the transactions of the trust. KRS 164A.340 provides, in pertinent part, that the trust may require adjustment of either payments or benefits in the event that a substituted beneficiary is eligible for enrollment at an institution on a date earlier than the original beneficiary. This administrative regulation establishes the notice provision for substitution of a beneficiary and administrative fee in the event of multiple substitutions. In addition, this administrative regulation is necessary to clarify and establish, respectively, the obligations of the participant and the trust in the event that the substituted beneficiary is older or younger than the original. This amendment is necessary to permit a participant that has separate accounts for more than one beneficiary to substitute one of the existing beneficiaries on the account on which the other beneficiary was designated in lieu of requiring the participant to cancel one of the accounts and incur cancellation fees.

(d) The benefits expected from administrative regulation are: The participant will be permitted to provide money for one beneficiary

from an account maintained by the participant for a different beneficiary without incurring the expense of cancellation fees.

(e) The administrative regulation will be implemented as follows: Pursuant to KRS 164A.330(7), a participant may substitute one beneficiary for another at any time until the beneficiary being removed from an account is admitted to a participating institution. A participant may cancel an account at any time and could redeposit the funds in an account for a different beneficiary. Pursuant to KRS 164A.330(4) a participant may not establish an account for a beneficiary after the beneficiary attains age 15. The participant shall notify the program administrator in writing of any substitution of one beneficiary for another. The amendment will permit a participant that has separate accounts for more than one beneficiary to substitute one of the existing beneficiaries on the account on which the other beneficiary was designated in lieu of requiring the participant to cancel one of the accounts.

Date: March 29, 1996
Kentucky Higher Education Assistance Authority

(1) The subject matter of the proposed administrative regulation is **11 KAR 12:070**, Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.

(2) The Kentucky Higher Education Assistance Authority 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, May 30, 1996, at 10 a.m., at 1050 U.S. 127 South, 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 May 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Educational Savings Plan Trust is KRS 164A.325(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation 11 KAR 12:070. It will modify Section 2, pertaining to beneficiaries residing off campus, by providing that the amount that may be disbursed from the trust account may be calculated by including the costs of transportation, books and supplies, and miscellaneous personal expenses as well as room and board and tuition and fees.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. This amendment is necessary to expand the uses of funds payable to a beneficiary residing off campus to conform with the amendment of the definition of "educational costs" in KRS 164A.305 by HB 104, enacted in the 1996 Regular Session of the General Assembly.

(d) The benefits expected from administrative regulation are: The amendment will provide greater flexibility for beneficiaries in the educational costs that may be met with funds from the Kentucky Educational Savings Plan Trust.

(e) The administrative regulation will be implemented as follows: If a beneficiary resides off campus, then, upon written request of the participant the program administrator may pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of room and board, transportation, books and supplies, and miscellaneous expenses for an academic period as established by the institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund or exceed the higher education costs for that institution.

COUNCIL ON HIGHER EDUCATION

Date: March 27, 1996
Council on Higher Education

(1) The subject matter of the proposed amendment to the administrative regulation is "Degree program approval; equal opportunity goals." The administrative regulation is **13 KAR 2:060**.

(2) The Council on Higher Education is charged by KRS 164.020(8) with the responsibility for defining and approving academic programs at the state-supported institutions and with ensuring that these institutions meet equal opportunity goals before academic programs are considered. The current administrative regulation sets forth specific dates for performance of equal opportunity goals in relation to the program approval process. A waiver process is also included in the administrative regulation. The proposed amendments will extend the dates of the program approval process and the desegregation plan for one year.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1996, at 10 a.m., in the Conference Room, Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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) calendar days prior to May 31, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request no later than May 11, 1996, to the following address: Council on Higher Education; Attn: Sherron Jackson, Director of Facilities and Equal Opportunity; 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) The following information relates to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to "Degree program approval; equal opportunity goals", 13 KAR 2:060, is KRS 164.020(8).

(b) The administrative regulation the council intends to promulgate is an amendment to 13 KAR 2:060 concerning a "Degree program approval; equal opportunity goals." The amendments will extend the dates for application of equal opportunity goals to the program approval process.

(c) The necessity and function of the proposed administrative regulation is as follows: The current administrative regulation makes reference to program approval and equal opportunity goals; the dates need to be extended.

(d) The benefit expected from the administrative regulation is: Continuation of the connection between equal opportunity goals and the program approval process as mandated by the legislature in KRS 164.020(8).

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

OFFICE OF THE ATTORNEY GENERAL
Department of Law

Date: April 8, 1996
Office of the Attorney General
Department of Law

(1) **40 KAR 1:040**, Parties who may request an opinion. This proposed administrative regulation specifies the parties to whom the Attorney General will issue opinions. It also repeals the two existing regulations dealing with attorney general opinions, 40 KAR 1:010 and 40 KAR 1:020.

40 KAR 1:050, Subjects on which opinions may be issued. This proposed administrative regulation specifies the subjects on which the Attorney General may issue opinions.

40 KAR 1:060, Subjects on which opinions will not be issued. This proposed administrative regulation specifies the subjects on which the Attorney General will not issue opinions.

40 KAR 1:070, Procedures for requesting and issuing opinions. This proposed administrative regulation sets forth the procedures applicable to requesting and issuing opinions.

(2) The Attorney General intends to promulgate the administrative regulations cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 28, 1996, at 1:30 p.m., in Room 141, State Capitol, 200 Capitol Avenue, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by a 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 May 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: Ross Carter, Assistant Attorney General, P.O. Box 2000, 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 Ross Carter at the address above.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of an administrative regulation relating to opinions is KRS 15.180.

(b) The administrative regulations that the Attorney General intends to promulgate will repeal 40 KAR 1:010 and 40 KAR 1:020 and replace them with four regulations. The first, 40 KAR 1:040, specifies the parties who may request an opinion. The second, 40 KAR 1:050, specifies the subjects on which the Attorney General may issue an opinion. The third, 40 KAR 1:060, specifies the subjects on which the Attorney

General will not issue an opinion. The fourth, 40 KAR 1:070, specifies the procedures applicable to requesting and issuing opinions.

(c) The necessity and function of the proposed administrative regulations are as follows: 40 KAR 1:040: KRS 15.025 sets out the conditions under which the Attorney General may furnish opinions. This regulation clarifies the parties who may request an opinion. This regulation also repeals two earlier regulations that are no longer applicable. 40 KAR 1:050: KRS 15.025 sets out the conditions under which the Attorney General may furnish opinions. This regulation sets out the subjects on which opinions may be issued. 40 KAR 1:060: KRS 15.025 sets out the conditions under which the Attorney General may furnish opinions. This regulation sets out the subjects on which the Attorney General will not issue opinions. 40 KAR 1:070: KRS 15.025 sets out the conditions under which the Attorney General may furnish opinions. This regulation sets out the procedures that must be followed when requesting opinions and the procedures that the Attorney General follows in issuing opinions.

(d) The benefit expected from these administrative regulations is the clear enunciation of the policies that the Attorney General follows in handling requests for opinions. Administrative regulations are necessary in order to provide necessary information to parties who may request an opinion.

(e) The regulation will be implemented by the Attorney General in accordance with KRS 15.025.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

Date: April 1, 1996
Finance and Administration Cabinet
Office of the Secretary

(1) **200 KAR 22:130.** Comprehensive employment manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations, 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 May 30, 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 May 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 Cabinet for Health Services, Department for Health Services, Division of Disability Determinations, for Use in the Pilot Personnel Program as required by KRS 18A.430(1).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation will promulgate the comprehensive employment manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations, for use in the Pilot Personnel Program.

(d) The benefit expected from this proposed administrative regulation is as follows: The comprehensive employment manual will specify the terms and conditions of employment for employees of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations 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 Cabinet for Health Services, Department for Health Services, Division of Disability Determinations when the regulation is made effective, with a recommendation that the comprehensive employment manual be made available to all employees participating in the Pilot Personnel Program.

KENTUCKY STATE BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS

Date: March 23, 1996
Kentucky State Board of Examiners and Registration of Landscape Architects

(1) Subject matter of amended administrative regulation, **201 KAR 10:050**, is to amend 201 KAR 10:050 "Fees" and to repeal 201 KAR 10:060 "Renewals".

(2) The Kentucky State Board of Examiners and Registration of Landscape Architects 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 May 31, 1996, at 10 a.m. at the Board Office located at the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 160 Democrat Drive, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to fees and renewals is KRS 323A.060 and 323A.210(2)(b).

(b) The administrative regulation that the Kentucky State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend 201 KAR 10:050 and repeal 201 KAR 10:060.

(c) The necessity and function of the proposed administrative regulation is as follows: The board has adopted a new administrative regulation updating fees and renewal procedures and combining two prior administrative regulations in order to collect necessary fees.

(d) The benefits expected from administrative regulation are: 201 KAR 10:050 and 201 KAR 10:060 will be superseded by an administrative regulation which will provide current fee information and clarity of the renewal process which will eliminate confusion among registrants.

(e) The administrative regulation will be implemented as follows: Fees will be imposed and collected as provided in 201 KAR 10:050.

KENTUCKY BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Date: April 15, 1996

Kentucky Board of Embalmers and Funeral Directors

(1) **201 KAR 15:010**, Definitions; **201 KAR 15:030**, Application for examination; fees; **201 KAR 15:040**, Examination; **201 KAR 15:050**, Apprenticeship requirements; **201 KAR 15:080**, Complaints of violations; **201 KAR 15:090**, Hearings.

(2) The Kentucky Board of Embalmers and Funeral Directors intends to promulgate administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 29, 1996, at 10 a.m., in the Capitol, 700 Capitol Avenue, Room 141, 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 May 29, 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: John Grant, Assistant Attorney General, P. O. Box 2000, Frankfort, Kentucky 40602-2000.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to John Grant at the above address, or by calling (502) 564-7600 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulations:

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter listed above is KRS 316.210(4).

(b) The administrative regulations that the Kentucky Board of Embalmers and Funeral Directors intends to promulgate will amend the above regulations to clarify procedures and requirements relating to definitions, application for examination, fees, examination, apprenticeship requirements, complaints of violations, and hearings and to comply with statutory revisions that the Kentucky General Assembly made to KRS Chapter 13B relating to administrative hearings and KRS Chapter 316 relating to embalmers and funeral directors during the 1996 Regular Session. The Kentucky Board of Embalmers and Funeral Directors intends to amend 201 KAR 15:010 to repeal 201 KAR 15:060 relating to annual license renewal, late renewal, and reinstatement and to repeal 201 KAR 15:100 relating to schools recognized by the board because these regulatory requirements have been made superfluous by the 1996 statutory revisions to KRS Chapter 316.

(c) The necessity and function of the proposed administrative regulations is as follows: Clarifies procedures and requirements and complies with 1996 statutory revisions to KRS Chapters 13B and 316.

(d) The benefits expected from these administrative regulations are that person will have a clearer understanding of procedures and requirements and the regulations will comply with 1996 statutory revisions to KRS Chapters 13B and 316.

(e) The administrative regulations will be implemented as follows: Licensees and apprentices will be required to comply with the

administrative regulations, and the Kentucky Board of Embalmers and Funeral Directors will enforce the administrative regulations.

KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Date: April 4, 1996
Kentucky Board of Speech-Language Pathology and Audiology

(1) Regulation Number and Title: **201 KAR 17:025**. Requirements for an interim license as a speech-language pathology assistant.

(2) The Kentucky Board of Speech-Language Pathology and Audiology intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written continents on the proposed administrative regulation has been scheduled for May 29, 1996, at 10:30 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 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: Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Speech-Language Pathology and Audiology 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 requirements for an interim license as a speech-language pathology assistant is KRS 334A.080.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 17:025 as follows: The examination provisions will be deleted.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 334A.033 establishes the guidelines for licensure as a speech-language pathology assistant. KRS 334A.035(2) requires an applicant for licensure as a speech-language pathology assistant to complete postgraduate professional experience in order to become licensed. This regulation establishes the requirements for interim licensure.

(d) The benefits expected from administrative regulation are: Applicants will no longer be required to sit for an examination in order to become licensed.

(e) The administrative regulation will be implemented as follows: The requirement will begin on the effective date of the administrative regulation.

KENTUCKY OCCUPATIONAL THERAPY BOARD

Date: April 4, 1996
Kentucky Occupational Therapy Board

(1) Regulation Number and Title: **201 KAR 28:120**. Applications by foreign trained OTRs and OTAs.

(2) The Kentucky Occupational Therapy Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written continents on the proposed administrative regulation has been scheduled for May 29, 1996, at 9:30 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 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: Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to applications by foreign trained OTRs and

OTAs is KRS 319A.070(3) and 319A.180.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 28:120 as follows: KRS 319A.180 requires foreign trained applicants to complete coursework substantially equal to those contained in KRS 319A.110. The proposed changes will include criteria necessary in order to establish equivalency.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 319A.180 provides for the licensure of foreign trained occupational therapists and occupational therapy assistants. This administrative regulation provides for licensure of those applicants.

(d) The benefits expected from administrative regulation are: All credentialed individuals will now be subject to the same requirements for licensure.

(e) The administrative regulation will be implemented as follows: The requirement will begin on the effective date of the administrative regulation.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

Date: April 15, 1996
Tourism Development Cabinet
Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 1:201**, Fishing limits; **301 KAR 1:100**, Trout stamp; **301 KAR 2:028**, Applying for disability hunting and fishing licenses.

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.170 and 150.470.

(b) The administrative regulations that the department intends to promulgate will:

1. Repeal 301 KAR 1:100 in its entirety and incorporate the provisions of Sections (2) and (4) of 301 KAR 1:100 into 301 KAR 1:201. The effect of these changes are:

a. To eliminate the requirement that the trout stamp be signed and affixed to the fishing license. Trout stamps are no longer valid licenses, and trout permits, issued as a part of the department's automated licensing system, do not require attachment.

b. To remove the provision that exempts persons not required to have a fishing license from having a trout permit. This provision is contrary to statute.

2. Add provisions to 301 KAR 2:028 to describe how persons declared totally and permanently disabled by the National Railroad Retirement Board are to certify their disability to the department; and to add requirements that those receiving disability cards provide their address and physical description on the card.

(c) The necessity and function of the proposed administrative regulation is to conform to statutory authority and to reflect current licensing procedures.

(d) The benefits expected from the administrative regulation are adherence to statutory authority and removing requirements that are no longer applicable.

(e) This administrative regulation will be implemented by publication of its provisions in departmental brochures and through mass media outlets, and enforcement by the department's divisions of law enforcement and water patrol.

JUSTICE CABINET
Department of Corrections

Date: April 12, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Use of force, inmate grievance procedure; inmate packages; and intensive supervision.

(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 May 31,

1996 at 9 a.m., in the Fifth Floor Conference Room, 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 May 31, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. 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. 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.

3. Inmate packages (16.4) shall be amended to limit the number of home mailed packages to one per inmate, provide a list of authorized items for home mailed packages, and clarify the procedure to be followed in placing vendor orders.

4. Intensive supervision (27-11-01) shall be amended to reflect correct policy number and also reflect that an inmate shall now be required to request a review for early parole consideration.

(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: April 11, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:060**, Northpoint Training Center: Food service: meals; inmate canteen; inmate accounts; records: release of information; sick call and pill call; utilization of pharmaceutical products; dental services; dental radiation levels; attest steam incubator; licensure and training standards; provisions for health care delivery; mental and dental records; special diets; inmate health screening and evaluation; special health care program; inmates assigned to health services; mental health care program; suicide prevention and intervention program; disposal of biohazard waste; vision care and optometry services; informed consent; special needs inmates; legal services program; inmate rights and responsibilities; board of claims; restoration of forfeited good time; extra duty assignments; hearing officer; inmate identification; inmate furloughs; telephone use and control; personal property control; authorized inmate personal property; unauthorized inmate property; disposition of unauthorized property; preparole progress report; classification; classification: 48 hour notification; special notice form; transfer of inmates; transfer of inmates to Kentucky Correctional Psychiatric Center; correctional industries; guidelines for correctional industries; educational programs.

(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 May 31, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. Food service: meals (11-04-01) shall be deleted as an LRC policy.

2. Inmate canteen (02-08-01) shall be amended to place the time in the inmate activities policy.

3. Inmate accounts (02-12-01) shall be amended to include the medical services, legal aide services and the cable television service.

4. Records: release of information (06-01-02) shall be amended to ensure compliance with applicable regulations.

5. Sick call and pill call (13-03-01) shall be amended to ensure continued compliance with American Corrections Association Standards and there are minor word changes.

6. Utilization of pharmaceutical products (13-04-01) shall be amended to correct the medication contractor.

7. Dental services (13-05-01) shall be amended to comply with ACA Standards.

8. Dental radiation levels (13-05-03) shall be amended to change the outline of the procedure to ensure consistency.

9. Attest steam incubator (13-05-04) shall be amended to correct minor word changes.

10. Licensure and training standards (13-06-01) shall be amended to comply with ACA Standards. The Health Services Department is supervised by the warden, therefore, approval of training shall be forwarded to the warden.

11. Provisions for health care delivery (13-07-01) shall be amended to comply with ACA Standards.

12. Mental and dental records (13-08-01) shall be amended to correct minor word changes.

13. Special diets (13-09-01) shall be amended to correct minor word changes.

14. Inmate health screening and evaluation (13-11-01) shall be amended to comply with ACA Standards.

15. Special health care program (13-12-01) shall be amended to specify the detoxification, alcohol or chemical dependency procedures.

16. Inmates assigned to health services (13-17-01) shall be amended to correct minor word changes.

17. Mental health care program (13-19-01) shall be amended to comply with ACA Standards and revise the attachment.

18. Suicide prevention and intervention program (13-19-03) shall be amended to comply with ACA Standards.

19. Disposal of biohazard waste (13-20-03) shall be amended to add Regulated Waste to this policy.

20. Vision care and optometry services (13-21-01) shall be amended to comply with ACA Standards.

21. Informed consent (13-22-01) shall be amended to comply with ACA Standards.

22. Special needs inmates (13-23-01) shall be amended to comply with ACA Standards.

23. Legal services program (14-01-01) shall be amended to outline current operating conditions.

24. Inmate rights and responsibilities (14-03-01) shall be amended to comply with ACA Standards and there are minor word changes throughout.

25. Board of claims (14-03-02) shall be amended to comply with ACA Standards and there are minor word changes.

26. Restoration of forfeited good time (15-01-01) shall be amended to correct minor word changes.

27. Extra duty assignments (15-02-02) shall be amended to comply with ACA Standards and to correct the current practice of recording extra duty.

28. Hearing officer (15-02-03) shall be amended to comply with ACA Standards and there are minor word changes.

29. Inmate identification (15-04-01) shall be amended to change the location in which inmates may be photographed for identification.

30. Inmate furloughs (16-03-01) shall be amended to comply with ACA Standards and there are minor word changes. The county clerk no longer maintains the furlough log. The attachments were revised to indicate current practices.

31. Telephone use and control (16-05-01) shall be amended to include outside detail inmate use of the pay telephone.

32. Personal property control (17-01-01) shall be amended to correct minor word changes. Attachment I was changed to list available programs.

33. Authorized inmate personal property (17-01-02) shall be amended to comply with ACA Standards and there are minor word changes.

34. Unauthorized inmate property (17-01-03) shall be amended to comply with ACA Standards and there are minor word changes.

35. Disposition of unauthorized property (17-01-04) shall be amended to correct minor word changes.

36. Preparole progress report (18-01-01) shall be amended to comply with ACA Standards and there are minor word changes.

37. Classification (18-02-01) shall be amended to correct minor word changes and to refer the reader to Corrections policy and procedure. Attachment F was added for referral services.

38. Classification - 48 hour notification (18-02-02) shall be amended to correct minor word changes.

39. Special notice form (18-03-01) shall be amended to comply with ACA Standards and there are minor word changes.

40. Transfer of inmates (18-05-01) shall be amended to comply with ACA Standards and there are minor word changes.

41. Transfer of inmates to Kentucky Correctional Psychiatric Center (18-05-02) shall be amended to clarify the procedures for transfer of inmates to this facility.

42. Correctional industries (19-02-01) shall be amended to change the programs available at the institution.

43. Guidelines for correctional industries (19-02-02) shall be amended to comply with ACA Standards and there are minor word changes.

44. Educational programs (20-01-01) shall be amended to add the discrimination policy and to change to the current operating conditions.

(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 OSSA 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: April 11, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:090**, Frankfort Career Development Center: Food service: general guidelines; due process and disciplinary procedures; visiting; assessment and orientation.

(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 May 31, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:090, as follows:

1. Food service: general guidelines (11-03-01) shall be amended to ensure compliance with all standards.

2. Due process and disciplinary procedures (15-03-01) shall be amended to comply with the Corrections policies and procedures and due process.

3. Visiting (16-01-01) shall be amended to refer the reader to the Corrections policies and procedures and to explain the visiting procedures.

4. Assessment and orientation (17-02-01) shall be amended to ensure complete assessment and orientation to transferring inmates.

5. Inmate death (13-17-01) shall be deleted as it is included in 13-05-01.

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

(d) The benefits expected from administrative regulation are: To comply with OSSA 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: April 11, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex: Purchasing procedures; inmate canteen; agency funds and accounting procedures; employee training and development; drug abuse and alcohol testing; food service inmate work responsibilities, evaluations, and health requirements; food service security; food service general guidelines; inmate clothing; special health programs; use of pharmaceutical products; health care services; legal services program; inmate grievance procedures; hair and grooming standards; visiting policy and procedures; inmate correspondence; inmate access to telephones; inmate packages; inmate personal property; inmate reception and orientation; education program; inmate recreation and leisure time activities; inmate club and organizations; religious services; inmate release process; prerelease programs.

(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 May 31, 1996, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1996, the public hearing will be cancelled.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:130, as follows:

1. Purchasing procedures (02-00-06) shall be amended for minor changes.
2. Inmate canteen (02-01-02) shall be amended for minor changes.
3. Agency funds and accounting procedures (02-02-01) shall be amended for minor changes.
4. Employee training and development (04-02-01) shall be amended for minor changes.
5. Drug abuse and alcohol testing (09-00-01) shall be amended for minor changes.
6. Food service inmate work responsibilities, evaluations, and health requirements (11-00-02) shall be amended for minor changes.
7. Food service security (11-00-04) shall be amended for minor changes.
8. Food service general guidelines (11-00-05) shall be amended for minor changes.
9. Inmate clothing (12-01-01) shall be amended for minor changes.
10. Special health programs (13-00-01) shall be amended for minor changes.
11. Use of pharmaceutical products (13-01-01) shall be amended for minor changes.
12. Health care services (13-02-01) shall be amended for minor changes.
13. Legal services program (14-04-01) shall be amended for minor changes.
14. Inmate grievance procedures (14-06-01) shall be amended for minor changes.
15. Hair and grooming standards (15-01-01) shall be amended for minor changes.
16. Visiting policy and procedures (16-01-01) shall be amended for minor changes.
17. Inmate correspondence (16-02-01) shall be amended for minor changes.
18. Inmate access to telephones (16-03-01) shall be amended for minor changes.
19. Inmate packages (16-04-01) shall be amended for minor changes.
20. Inmate personal property (17-01-01) shall be deleted as this policy is covered in CPP 17.1.
21. Inmate reception and orientation (17-02-01) shall be amended for minor changes.
22. Education program (20-01-01) shall be amended for minor changes.
23. Inmate recreation and leisure time activities (22-00-01) shall be amended for minor changes.
24. Inmate club and organizations (22-00-02) shall be amended for minor changes.
25. Religious services (23-00-01) shall be amended for minor changes.
26. Inmate release process (25-02-01) shall be amended for minor changes.
27. Prerelease programs (25-03-01) shall be amended for minor changes.

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

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

TRANSPORTATION CABINET

Date: April 15, 1996
Transportation Cabinet

(1) **600 KAR 2:020**, Emergency vehicles and vehicles in processions on the toll roads; and **600 KAR 2:030**, Toll road credit cards.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations governing vehicles in procession and credit card use on toll highways.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 30, 1996 at 3:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of 600 KAR 2:020 is KRS 174.080, 175.470 and 175.520. The statutory authority for the promulgation of 600 KAR 2:030 is Section 1 of HB 304 as enacted by the 1996 General Assembly.

(b) The Transportation Cabinet intends to promulgate amendments to existing administrative regulations.

(c) The necessity and function of the proposed administrative regulations are as follows: 600 KAR 2:020 - The Department of Highways is authorized to charge and collect toll for transit over each turnpike project. Section 1 of HB 304, enacted by the 1996 General Assembly, specifically exempts certain emergency vehicles and other vehicles from the payment of tolls under certain circumstances. Further, the Department of Highways has determined the Transportation Cabinet and Kentucky National Guard vehicles should not pay the toll and are exempted by the provisions of this administrative regulation. The administrative regulation also sets forth a manner in which emergency vehicles and vehicles in procession may be processed through a toll collection station. 600 KAR 2:030 - Tolls are charged on Kentucky's turnpike or toll road system in accordance with 600 KAR 2:010. Some companies and individuals make extensive use of the toll roads. To simplify payment for such companies or individuals, the General Assembly, pursuant to Section 1 of HB 304, enacted by the 1996 General Assembly, authorized the issuance of toll road identification cards for both paying and nonpaying users of the toll facilities. This administrative regulation will establish the criteria for a credit card account, the application, the billing procedures and account termination. Further, it will clearly establish that even those persons who already had a toll road credit card were required to obtain the toll road identification card included in HB 304.

(d) The benefits expected from these administrative regulations are simplification of the process for funeral processions and a recovery of part of the cost of administering the toll road credit card program by the Transportation Cabinet.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 1:140**, U-drive-it permit application procedures; **601 KAR 1:145**, Reporting and paying of usage tax pursuant to U-drive-it permit; **601 KAR 1:146**, Fair market rental or lease values of vehicles operating pursuant to a U-drive-it permit; and **601 KAR 1:147**, Auditing of U-drive-it permit holders.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations relating to the issuance of permits, the collection of uses taxes and the auditing of usage taxes in the U-drive-it Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996 at 2:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation 601 KAR 1:140 is KRS 138.463, 186.005, and 281.600. The statutory authority for the promulgation of administrative regulation 601 KAR 1:145 is KRS 138.463, 186.281, 186.005, and 281.600. The statutory authority for the promulgation of 601 KAR 1:146 is KRS 138.463. The statutory authority for the promulgation of administrative regulation 601 KAR 1:147 is KRS 138.463, 186.005, 186.281, and 281.600.

(b) Two of the administrative regulations that the Transportation Cabinet intends to promulgate will amend existing administrative regulations (601 KAR 1:140 and 601 KAR 1:145). The other two administrative regulations are proposed new administrative regulations (601 KAR 1:146 and 601 KAR 1:147).

(c) The necessity and function of the proposed administrative regulation is as follows: The necessity and function of 601 KAR 1:140 is the Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax and to qualify U-drive-it operators. This administrative regulation sets out the procedures to be followed by an applicant for a U-drive-it permit. It also establishes procedures for obtaining a vehicle identification document for the payment of the monthly usage tax. It is necessary it be amended at this time since HB 312, passed by the 1996 General Assembly, amended KRS 138.463 to create a rebuttable presumption that the issuance of a U-drive-it permit under the provisions of KRS Chapter 281, the holder of the permit is regularly engaged in renting or leasing motor vehicles. The necessity and function of 601 KAR 1:145 is the Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax. In this administrative regulation, the Cabinet establishes the procedure for obtaining the vehicle identification document and for payment of the monthly usage tax. The necessity and function of 601 KAR 1:146 is the Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax. KRS 138.463 requires the fair market rental or lease value of the motor vehicle shall be based on standards established by administrative regulation promulgated by the Transportation Cabinet. These standards are to be used in establishing the amount of the usage tax reported and paid on every rental or leased vehicle. The necessity and function of 601 KAR 1:147 is the Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax in order to ensure each permit holder is paying the appropriate amount of taxes the Transportation Cabinet periodically audits each permit holder. This administrative regulation is needed in order to establish the audit standards to which the permit holders will be held in their future audits.

(d) The benefits expected from these administrative regulations are a clear understanding between the Transportation Cabinet and the U-drive-it permit holders of what each entity's role is, how their books are to be maintained, and what taxes they can expect to be paying on U-drive-it vehicles.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 5:330**, Overweight annual permits.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the annual permit for overweight loads which was required by HB 168 passed by the 1996 General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996 at 3:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is HB 168 as enacted by the 1996 General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation designed to implement HB 168 as enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 168, passed by the 1996 General Assembly, established a new type of annual permit for the transportation of nondivisible overweight loads. This administrative regulation establishes the permit application procedures for this permit as well as the movement requirements necessary in the interest of highway safety and convenience.

(d) The benefit expected from this administrative regulation is increased highway safety.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 9:100**, Alternate procedures; and **601 KAR 9:140**, Temporary registration plates.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations to implement the provisions of House Bill 241 passed by the 1996 General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 29, 1996 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of 601 KAR 9:100 is KRS 186A.135 and 186A.140. The statutory authority for the promulgation of 601 KAR 9:140 is KRS 186A.100.

(b) The Transportation Cabinet intends to promulgate amendments to existing administrative regulations.

(c) The necessity and function of the proposed administrative regulations are as follows: 601 KAR 9:100 - This administrative regulation provides an alternate method for the issuance of registration certificates when the Automated Vehicle Information System (AVIS) has been rendered inoperable. KRS 186A.100 as amended in the 1996 Legislative Session allows for the issuance of a temporary tag under emergency or unusual circumstances. When AVIS is inoperable would be the most appropriate of those times. 601 KAR 9:140 - KRS Chapter 186A allows a county clerk to issue a temporary registration plate to a vehicle currently registered and titled in this state. The statutes previously allowed the county clerk to issue a temporary registration plate to vehicles which had NOT previously been registered and titled in Kentucky. This administrative regulation must be amended to reflect the changes in state law enacted by the 1996 General Assembly in House Bill 241.

(d) The benefits expected from these administrative regulations are compliance with state law and better service to vehicle owners when the Automated Vehicle Information System is inoperable.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 9:230**, Application for and issuance of a speed title.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the application for and issuance of speed titles.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 186A.170 as amended by the 1996 General Assembly in House Bill 220.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate is a new administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 186A.170 requires the Transportation Cabinet to issue a speed title within 24 hours of electronic notification by a county clerk's office. This administrative regulation sets forth the application and procedures which must be followed in order to be eligible for a speed title.

(d) The benefit expected from this administrative regulation is a clear understanding of the requirements for the issuance of a speed title which was authorized by House Bill 220 passed by the 1996 General Assembly.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 9:240**, Application for a motor vehicle title.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the forms which must be used when applying for a motor vehicle title.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996 at 11 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 186A.060.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation designed to implement a portion of House Bill 220 as enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: House Bill 220, passed by the 1996 General Assembly, amended various sections of KRS 186A.060 to require the Transportation Cabinet to reduce the amount of paperwork required to apply for or transfer a motor vehicle title. It further required, whenever possible, the Transportation Cabinet use the title itself as the primary form used effect a transfer of vehicle ownership. This administration regulation is necessary to establish specifically what forms are necessary in order to apply for a title or title transfer.

(d) The benefit expected from this administrative regulation is a reduction in the amount of paperwork necessary when applying for a Kentucky motor vehicle title.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 11:010**, Fees relating to commercial driver's license; **601 KAR 12:030**, Instruction permit; **601 KAR 13:025**, The point system; **601 KAR 13:070**, School attendance and academic sufficiency verification; **601 KAR 13:110**, State traffic school; **601 KAR 12:040**, Driving history records; fee.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations implementing the provisions of HB 400 passed by the 1996 General Assembly. This bill related to driving requirements and the licensing of young persons. It is commonly called, "The Graduated Driver Licensing Bill".

(3) A public hearing to receive oral and written comments on these proposed administrative regulations has been scheduled for May 30, 1996 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of these administrative regulations are: 601 KAR 11:020 is KRS 281A.100; 601 KAR 12:030 is KRS 186.400; 601 KAR 12:040 is KRS 186.400 and 186.018; 601 KAR 13:025 is KRS 186.400; 601 KAR 13:070 is KRS 186.400; 601 KAR 13:110 is KRS 186.400.

(b) The administrative regulations that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation except 601 KAR 13:110 which will be a new administrative regulation. However, all of the changes are needed in order to implement the provisions of HB 400 passed by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulations are as follows: 601 KAR 11:020 - The necessity and function currently reads, "KRS 281A.100 allows the dissemination of commercial driving history records. It further allows the Transportation Cabinet to charge a fee and establish what shall be included in the driving history record. This administrative regulation establishes the content of a commercial driving record, the fee for purchasing a record and the procedures to be followed for purchasing a record." An amendment to the administrative regulation is needed to delete the 10 cent per record reduction allowed for persons requesting commercial driving history records by data processing recording media. House Bill 400 passed by the 1996 General Assembly requires that the full $5 fee be charged and the 10 cent per record be used to provide driving education for youth. 601 KAR 12:030 - The necessity and function currently reads, "This administrative regulation requires a new driver to possess an instruction permit for a minimum of one (1) calendar month prior to taking a driving test. This gives the new driver an opportunity to practice good driving habits." HB 400, passed by the 1996 General Assembly, requires the new driver possess the instruction permit for six months prior to taking a driving test. Therefore, this administrative regulation must either be repealed or amended. 601 KAR 12:040 - The current necessity and function reads, "KRS 61.874 authorizes any agency required to keep public records to adopt reasonable fees to defray costs of furnishing copies to the public. This administrative regulation is adopted to provide a reasonable fee to defray the cost of furnishing a copy of a person's driving history record to the person making a proper request." HB 400, passed by the 1996 General Assembly set the fee at $3 per copy of a driving history record, which is the same as the existing administrative regulation fee. However, Section 2 of this administrative regulation provided a 10 cent reduction in the cost per record for those persons submitting requests for driving history records by any method of data processing recording media. HB 400 does not allow for that reduction in cost, and instead, it was the intention of the General Assembly that the additional 10 cents be used to fund the State Traffic School Program which new drivers are required to attend. Therefore, this administrative regulation will have to be amended or repealed. 601 KAR 13:025 - The necessity and function currently reads, "This administrative regulation specifies the driver licensing point system in which traffic offense convictions are assigned a certain number of points, according to the seriousness of the offense as determined by either accident cause statistics or by statute. Certain offenses have proven so dangerous that they are made cause for suspension periods rather than point accumulation. The purpose of the point system is to establish a criterion whereby the discretion allowed the Transportation Cabinet in determining the 'habitually reckless or negligent driver' or the 'serious violator' is not exercised arbitrarily and capriciously, but each license holder will be treated like every other one, and each will know or can determine his point status at any given time." An amendment to this administrative regulation is needed because HB 400, passed by the 1996 General Assembly, addressed enhanced penalties for persons under the age of 18 who received points against their driving record. 601 KAR 13:070 - The necessity and function currently reads, "HB 43 passed in the Regular Session of the 1990 General Assembly is applicable only in those counties served by a school district which has an alternative education program approved by the Department of Education. The bill requires anyone under the age of eighteen (18) years who has applied for either a learner's permit or operator's license and who has not graduated from high school to present verification issued by his school within the preceding thirty (30) days that he is enrolled in school and has not been found academically deficient. Further, KRS 186.560 requires the Transportation Cabinet as soon as notified to revoke the license of a person under the age of eighteen (18) years who has dropped out of school or is academically deficient. This administrative regulation sets forth the information which is to be submitted to the Transportation Cabinet and the circuit court clerk in order for them to meet their statutory duties. It further sets forth the times when a school attendance form is to be presented and the steps to be followed by a youth in having his driving privilege restored." HB 400, as enacted by the 1996 General Assembly, repealed KRS 186.470(4). This statute related to the presentation of proof of academic sufficiency in school at the time of application for an operator's license. Therefore, the existing administrative regulation governing that program must be amended to reflect that the proof must be submitted only at the time of application for a learner's permit. 601 KAR 13:110 - The necessity and function reads, "There must be distinction made between State Traffic School authorized by KRS 186.574 for

persons to attend in lieu of other penalties being established for convictions of traffic violations and the State Traffic School that new drivers are required to attend in order to retain their driving privilege. In addition, since a Driver Training School licensed pursuant to KRS Chapter 332 is permitted to substitute for the State Traffic School established by KRS 186.574, the standards of that school and the oversight of the Driver Training School licensed to KRS Chapter 322, must be established by administrative regulation."

(d) The benefit expected from these administrative regulations is implementation of HB 400 relating to "Graduated Driver's License" and subsequently an increase in highway safety.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 12:100**, Photograph for an operator's license.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation establishing criteria to assist the Circuit Clerk in determining what attire obscures the features of an applicant's face applying for an operator's license.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1996 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is KRS 186.413.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation designed to implement SB 158 as enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: SB 158, enacted by the 1996 General Assembly, allows the Transportation Cabinet to promulgate administrative regulations to establish criteria to assist the Circuit Clerk in determining what attire obscures the features of an applicant's face applying for a motor vehicle operator's license. The Circuit Clerk is prohibited from issuing an operator's license to a person who refuses to remove any obscuring material. In addition, the Transportation Cabinet will evaluate as part of the public hearing whether or not additional provisions relating to the application for a motor vehicle operator's license is needed to be placed in administrative regulation.

(d) The benefits expected from this administrative regulation are motor vehicle operator's license which can readily be used by law enforcement and business establishments to identify the person in whose name the motor vehicle operator's license has been issued.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **601 KAR 13:090**, Medical Review Board, basis for examination, evaluation, tests; and **601 KAR 13:100**, Medical standards for operators of motor vehicles.

(2) The Kentucky Transportation Cabinet intends to promulgate two administrative regulations governing the medical condition of operators of motor vehicles.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996 at 12:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of these administrative regulations is KRS 186.411, 186.440, 186.444, and 186.570.

(b) The administrative regulations that the Transportation Cabinet intends to promulgate will be new administrative regulations designed to replace administrative regulation 601 KAR 13:011 which was found deficient by the Administrative Regulation Review Subcommittee and therefore expired on April 15, 1996.

(c) The necessity and function of the proposed administrative regulations are as follows: 601 KAR 13:090 - The Medical Review Board has existed through administrative regulation since June 1964. The 1994 General Assembly passed two bills, SB 205 and HB 417, mandating the establishment of the Medical Review Board and authorizing the Transportation Cabinet to promulgate administrative regulations to implement the Medical Review Board Program. Statutory authority was necessary because the Administrative Regulations Review Subcommittee determined in late 1993 that the Transportation Cabinet did not have the specific authority necessary to promulgate administrative regulations relating to the Medical Review Board. Because of a slight conflict between SB 205 and HB 417, which were codified in different statutes and therefore not reconcilable by the Statutes Revisor, the Transportation Cabinet is including in this administrative regulation clarification of the differences between the two bills. 601 KAR 13:100 - KRS 186.570 requires the Transportation Cabinet to withhold driving privileges from an individual who has a mental or physical disability that makes it unsafe for him to operate a motor vehicle. KRS 186.411 requires that a person with a seizure condition be seizure-free for ninety days prior to licensing. This administrative regulation sets forth the standards to be used by the Transportation Cabinet and the Medical Review Board in determining who because of a physical or mental disability cannot safely operate a motor vehicle.

(d) The benefit expected from this administrative regulation is an increase in highway safety.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **603 KAR 5:070**, Motor vehicle dimension limits; **603 KAR 5:251**, Counties deficient in STAA highways; and **603 KAR 5:340**, Industrial haul permits issued for overdimensional vehicles.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations governing the dimensions of motor vehicles which are allowed to operate on the highways of the Commonwealth of Kentucky.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 30, 1996 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of these administrative regulations are KRS 189.222, 189.271 and HB 427, as enacted by the 1996 General Assembly.

(b) The administrative regulations that the Transportation Cabinet intends to promulgate are two new administrative regulations and the amendment of one existing administrative regulation.

(c) The necessity and function of the proposed administrative regulations are as follows: 603 KAR 5:070 - KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System. The State Primary Road System consists of those highways maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a five-mile access on state-maintained highways and a one-mile access on locally-controlled highways be included with a list of highways over which motor vehicles with increased dimensions are allowed to operate. This administrative regulation must be amended to include the specification found in HB 427 that motor vehicles transporting agricultural commodities to or from a farm are exempted from the dimension provisions of this administrative regulation. 603 KAR 5:251 - HB 427 (1) specifies the Transportation Cabinet is to promulgate an administrative regulation to list the counties and highway segments for those counties that do not have at least 10 miles of existing highway designated pursuant to 603 KAR 5:070 for operation of motor vehicles that have a width of 102 inches. The statute further requires the larger dimensioned vehicles may be operated in the identified counties on the state-maintained segments of highways which have lane widths of ten or more feet and are designated by the Transportation Cabinet as capable of accommodating an 80,000 pound gross weight limit. This administrative regulation sets forth the listing of counties and the highways in those counties which are affected. 603 KAR 5:340 - KRS 189.271 allows the Transportation Cabinet to issue industrial haul permits for the transportation of vehicles which are either overweight or overdimensional provided the permit holder meets criteria set forth by the Transportation Cabinet. This administrative regulation shall set forth the safety criteria which must be met in order to be issued an industrial haul permit for a motor vehicle which is only overdimensional and not overweight on the routes for which its owner wishes it to be operated.

(d) The benefit expected from these administrative regulations is better access to facilities in the Commonwealth which were constructed without consideration of the highway needs in those areas. The biggest benefit expected from this administrative regulation is allowing the companies to use many highways which are now legally closed to them but to ensure highway safety is maintained.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **603 KAR 5:230**, Bridge weight limits on the extended weight coal or coal by-products haul road system.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the extended weight coal haul road system.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1996 at 4 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is KRS 177.9771.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed by KRS 177.9771 on any bridge which may be damaged or destroyed by catastrophic failure if gross vehicle weights exceed certain limits. This administrative regulation identifies the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribed the maximum weight limit for each of these bridges. Further, KRS 177.9771 as amended by the 1996 General Assembly in the passage of SB 255, requires those roads which are now or have been toll roads automatically be added to the list of roads which are part of the extended weight coal or coal by-products haul road system. An amendment to this administrative regulation is necessary to add in those roads identified by SB 255 which are not currently included in the extended weight coal or coal by-products haul road system.

(d) The benefit expected from this administrative regulation is the ability to have all roads on the extended weight coal haul road system listed in one location.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: April 15, 1996
Transportation Cabinet

(1) **603 KAR 5:320**, Highway work zone safety.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the posting of reduced speed limits and penalties in highway work zones.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is HB 271 as enacted by the 1996 General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation designed to implement HB 271 as enacted by the 1996 General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 271 passed by the 1996 General Assembly required the Transportation Cabinet to promulgate administrative regulations governing the posting of signs advising motorists that penalties are increased for traffic violations occurring on state-maintained streets or state-maintained highways in a highway work zone. The administrative regulation promulgated by the cabinet shall include guidelines to determine which areas are appropriate to the posting of these signs. The guidelines may include, but are not limited to, the duration of the work on the highway; the proximity of workers to moving traffic; the existence

of any unusual or hazardous conditions; the volume of traffic on the highways and other appropriate factors.

(d) The benefit expected from this administrative regulation is a reduction in the number of accidents in highway work zones.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

KENTUCKY BOARD OF EDUCATION

Date: April 1, 1996
Kentucky Board of Education

(1) **702 KAR 3:130**, Internal accounting.

(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 May 31, 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 May 31, 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:

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to internal accounting and auditing.

(b) The administrative regulation that the Department of Education intends to amend is 702 KAR 3:130.

(c) The necessity and function of the proposed administrative regulation is to ensure that all local school district internal accounts are audited annually by a certified public accountant.

(d) The benefits expected from this administrative regulation are to produce a clearer understanding as to what funds are to be audited.

(e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents and finance officers with direction that the same be forwarded to each school principal. Copies will also be forwarded to members of the Kentucky Society for Certified Public Accountants.

Date: April 4, 1996
Kentucky Board of Education

(1) **704 KAR 3:390**, Extended school services. The proposed administrative regulation sets forth the procedures by which local school districts may apply for funds and operate an extended school services program. The proposed amendment primarily removes the requirement for the state board to annually approve the funding formula. Other changes are to bring language and practice up-to-date, i.e., allows districts to use the funds for up to 15 months and allows districts to submit student performance data instead of an annual self-evaluation.

(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 May 31, 1996, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to the extended school services program is KRS 158.070.

(b) The administrative regulation that the Kentucky Board of Education intends to amend sets forth the guidelines for the operation of the program.

(c) The necessity and function of the proposed administrative regulation intends to amend sets forth the basic formula for calculation

of school grants which will be used in each following year.

(d) The benefit expected from the administrative regulation is to provide the Department of Education consistent data with which to calculate grants to school districts for extended school services programs.

EDUCATION PROFESSIONAL STANDARDS BOARD

Date: March 1996
Education Professional Standards Board

(1) **704 KAR 20:052**, repealing 704 KAR 20:050, Time limit for applying for certification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 24, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 24, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Betty Lindsey, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 704 KAR 20:052 is KRS 161.020, 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will repeal is 704 KAR 20:050. This regulation was initially adopted in December 1974 and was last revised in September 1984. 704 KAR 20:670, Kentucky teaching certificates, establishes the timelines for applying for certification. If 704 KAR 20:050 is allowed to remain in regulation, it will be in direct conflict with 704 KAR 20:670. In a review of existing regulations and in keeping with the new certification plan, staff identified the conflict between the two regulations.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of a program of preparation approved by the Education Professional Standards Board; furthermore, 704 KAR 20:670 establishes timelines for applying for certification. If 704 KAR 20:050 remains in regulation, it will be in conflict with the more current regulation 704 KAR 20:670.

(d) The benefits expected from the administrative regulation are: Clarification of the timeline process for applying for teaching certificates.

(e) The administrative regulation will be implemented as follows: The regulation will be communicated to colleges and universities which have approved preparation programs. As the need arises, Division of Certification staff will inform local school districts about the current regulations and procedures for applying for teaching certificates.

Date: March 1996
Education Professional Standards Board

(1) **704 KAR 20:475**, Probationary certificate for teachers of technology education.

(2) The Education Professional Standards Board 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 May 24, 1996, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 24, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.

(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 regulation to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a probationary certificate for teachers of technology education is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will provide for the issuance of a probationary certificate for teachers of technology education when a qualified teacher is not available as attested by the local superintendent.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Educational Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of technology education.

(d) The benefits expected from administrative regulation are: There is a shortage of certified and qualified teachers of technology education. This administrative regulation will provide for recruiting certified middle and secondary school teachers into technology teaching positions (examples include, but are not limited to drafting, electronic communication systems, woods, metals, computer aided manufacturing, electricity/electronics, transportation systems). The proposed regulation shall provide for training related to student safety. Furthermore, the applicant shall have developed a plan with an appropriate technology education teacher trainer and a program consultant representing the Division of Secondary Vocational Education which shall lead to full certification and to include a personal professional development plan.

(e) The administrative regulation will be implemented as follows: A joint communication from the Division of Certification and the Division of Secondary Vocational Education shall communicate the provisions of the recruitment plan to local school districts and the procedures for applying for the probationary certificate for teachers of technology education.

WORKFORCE DEVELOPMENT CABINET
Department for Employment Services

Date: March 21, 1996
Workforce Development Cabinet
Department for Employment Services

(1) **787 KAR 1:210,** Employer contribution rates.

(2) The Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance, 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 May 30, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Beverly Haverstock, General Counsel, Office of General Counsel, Workforce Development Cabinet, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-6606.

(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 Employment Services, 275 East Main Street, 2nd Floor East, 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 Workforce Development Cabinet 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 employer contribution rates is state statute and by federal regulation.

(b) The administrative regulation that the Department for Employment Services intends to promulgate will amend 787 KAR 1:210, Employer contribution rates. It will set the unemployment insurance tax rate schedule that is in effect for calendar year 1996.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employers' contributions. The rate schedule in effect for each calendar year shall be determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

(d) The benefit expected from this administrative regulation is: This proposed administrative regulation sets forth the applicable employer contribution rates for 1996.

LABOR CABINET
Kentucky Department of Workers' Claims

Date: April 11, 1996
Labor Cabinet
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is procedure in workers' compensation enforcement hearings, **803 KAR 25:015.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, 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 a request for a public hearing, and agreement to attend the public hearing, is not received from the required number of people at least 20 days prior to May 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: Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Valerie L. Salven, General Counsel.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to procedure in workers' compensation enforcement hearings is KRS 342.990 and Chapter 13B.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will establish procedures for use in workers' compensation enforcement hearings before administrative law judges in conformity with KRS Chapter 13B, the State Administrative Hearings Act.

(c) The necessity and function of the proposed administrative regulation is as follows: 803 KAR 25:010 provides the procedure for adjustments of claims, but does not provide a suitable procedure for use in proceedings that follow the issuance of a citation and notice of civil fine under KRS 342.990. Senate Bill 292 of the 1996 General Assembly exempts workers' compensation benefits proceedings from the application of the State Administrative Hearings Act, KRS Chapter 13B. Enforcement hearings are required to conform to KRS Chapter 13B, and the purpose of this proposed administrative regulation is to provide the appropriate procedure for workers' compensation enforcement proceedings.

(d) The benefits expected from administrative regulation are: Guidance to administrative law judges, agency attorneys, private attorneys and parties cited under KRS 342.990 concerning the procedures that will be followed with respect to disputes concerning administrative citations and fines.

(e) This administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about what the proposed administrative regulation should contain. It is anticipated that a rough draft or outline of the proposed administrative regulation will be available by the date of the public hearing, if not before, and that the proposed regulation will address the procedures for contesting a fine including the discovery of evidence, hearing and briefing procedures, the issuance of an opinion and order by and administrative law judge, and subsequent appeals or payments of fines.

Date: April 11, 1996
Labor Cabinet
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is **803 KAR 25:020**, Workers' compensation pharmacy fee schedule.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996, at 10 a.m., at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, 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 a request for a public hearing, and agreement to attend the public hearing, is not received from the required number of people at least 20 days prior to May 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: Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Valerie L. Salven, General Counsel.

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

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

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

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

above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to a workers' compensation pharmacy fee schedule is KRS 342.035.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:092 as follows: It will update the existing pharmacy fee schedule to assure that all fees, charges, and reimbursements concerning workers' compensation patients shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.035 requires all workers' compensation fee schedules contained in administrative regulations to be reviewed and updated, if appropriate, every two years.

(d) The benefits expected from administrative regulation are: Compliance with KRS 342.035.

(e) The administrative regulation will be implemented as follows: After comments about the current pharmacy fee schedule are received during the Notice of Intent Hearing, they will be considered and the fee schedule will be reviewed to determine whether the current fee schedule which allows a pharmacist to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock at the time of dispensing, plus a $5 dispensing fee and any applicable tax, should be changed.

Date: April 11, 1996
Labor Cabinet
Kentucky Department of Workers' Claims

(1) **803 KAR 25:190**, Utilization review and medical bill audit.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 29, 1996, at 10 a.m. at the Department of Workers Claims, 1270 Louisville Road, Perimeter Park West, Building C, 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 May 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Marcy D. Ches, Staff Attorney.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to a workers' compensation utilization review and medical bill audit is KRS 342.035(5).

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:190, Utilization review and medical bill audit, as follows: It will more specifically define the procedures whereby the Department of Workers Claims approves and monitors utilization review and medical bill audit plans. It will more specifically define application procedures, plan requirements, and the interaction with other statutes and regulations under KRS Chapter 342.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. The necessity of the amended regulation is to eliminate confusion and inconsistencies in the utilization review and medical bill audit program. The function of this administrative regulation is to insure that all insurance carriers, group self-insurers, and individual self-insured employers implement effective utilization review and medical bill audit programs.

(d) The benefits expected from administrative regulation are: Additional guidance to insurance carriers, group self-insurers, and individual self-insured employers in submitting utilization review and medical bill audit plans to the Department of Workers Claims for approval in compliance with KRS 342.035(5) and 803 KAR 25:190.

(e) The administrative regulation will be implemented as follows: After comments about the current utilization review and medical bill audit plan requirements are received during the Notice of Intent Hearing, they will be considered and the current regulation will be reviewed to determine what amendments are warranted. It is anticipated that a rough draft of proposed amendments will be available by the date of the public hearing, if not before.

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

Date: April 15, 1996
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 8:010**; Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

(2) The Department of Housing, Buildings and Construction 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 Thursday, May 30, 1996, at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.654.

(b) The department intends to amend this administrative regulation by reducing the passing grade on the master examination to 70 percent from 75 percent.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 198B.658 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations to coordinate and administer the HVAC Act requiring persons engaged in the business of heating, ventilation and air conditioning (HVAC) contracting to be licensed. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors. The board found that the 75% was excessively restrictive.

(d) The benefits expected from this administrative regulation are: That the public will be better protected by the licensing of qualified HVAC contractors.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

Date: April 15,1996
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 8:020**; Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

(2) The Department of Housing, Buildings and Construction 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 Thursday, May 30, 1996, at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.654.

(b) The department intends to amend Section 5 of this administrative regulation by recognizing teaching experience of a HVAC teacher

as equal to one (1) year work experience.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the business of heating, ventilation and air conditioning (HVAC) installation and repair to be licensed. This amendment is necessary to make the administrative regulation comply with HB 189 of the 1996 General Assembly.

(d) The benefits expected from this administrative regulation are: This administrative regulation will establish a cohesive program for qualifying journeyman and providing for appropriate supervision by master contractors and for apprentices. The public will be protected by having a state agency to assist in oversight of code complying installations.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

Date: April 8, 1996
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:130** - House sewers and storm water piping; methods of installation.

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Thursday, May 30, 1996, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 318.130.

(b) The department intends to amend 815 KAR 20:130, House sewers and storm water piping; methods of installation by creating a new subsection in Section 12 to address the flooding of new buildings by combination sanitary/storm sewers and amending Section 18 to allow occupants of a building to be able to use portions of their plumbing system while their sewage ejector is out of service.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation identifies the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation.

(d) The benefits expected from administrative regulation are: The amendment in Section 12 would help eliminate flood damage by overflowing combined sewers and the amendment in Section 18 would reduce inconvenience during pump service and repair during electrical outages.

(e) This administrative regulation will be implemented by the Division of Plumbing through each county area inspector.

Date: April 15, 1996
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 30:060**, Certification of underground petroleum storage tank contractors.

(2) The department 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 Thursday, May 30, 1996 at 10 a.m., local time, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.60-135.

(b) The department intends to amend Section 3(1)(c) to require contractor to be present during installation of piping as well as during final inspection.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals.

(d) The benefits expected from this administrative regulation are: That the public will be better protected by certifying the competency of the contractors.

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

Date: April 15, 1996
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 35:015**; Certification of electrical inspectors.

(2) The Department of Housing, Buildings and Construction 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 10 a.m., local time, on Thursday, May 30, 1996, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.489 and 13A.100.

(b) The department intends to amend 815 KAR 35:015 to establish a minimum number of continuing education hours each inspector shall attend each year, and clarify that the use of a temporary yellow sticker shall be used at the discretion of the inspector.

(c) The necessity and function of the proposed administrative regulation is as follows: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.489 to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation is needed to establish the procedures for achieving and maintaining the certification and to encourage inspectors to pass the National examination sooner, but allowing flexibility for late renewals.

(d) The benefits expected from this administrative regulation are: Timely submittal of renewal certification of electrical inspectors and reduction of temporary certification to encourage applicants to take the certification examination.

(e) This administrative regulation will be implemented by the Division of Fire Prevention; Electrical Section.

Date: April 15, 1996
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 35:030**; Kentucky certification of electrical contractors.

(2) The Department of Housing, Buildings and Construction 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 10 a.m., local time, on Thursday, May 30, 1996, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.4901.

(b) The department intends to amend 815 KAR 35:030 as follows:

1. Delete Section 3, Proof of insurance, and Section 6, Notice of Penalty.

2. Increase the payment of the delinquent revival fee to $100.

3. Revise the Application form for Electrical Contractor Certification in Section 7 to delete the workers' compensation and unemployment insurance affidavit. Local permits require this at time of construction. State review is redundant and serves no valuable purpose.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 227.4901 requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary in order to reduce the administrative burden on the department, to reduce the "red tape" for contractors and to maintain flexibility in maintaining one's certification but fine for not being timely and to establish procedures of administration and reasonable fees to carry on the certification program.

(d) The benefits expected from this administrative regulation are: Timely submittal of renewal certifications to electrical contractors.

(e) This administrative regulation will be implemented by the Division of Fire Prevention; Electrical Section.

CABINET FOR HEALTH SERVICES
Office of Inspector General

Date: April 15, 1996
Cabinet for Health Services
Office of Inspector General

(1) **902 KAR 20:018** - Operation and services; renal dialysis facilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1996, at 9 a.m. in the Cabinet 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 May 30, 1996, the public hearing will be cancelled.

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

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

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

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

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

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

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for 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 renal dialysis facilities is KRS 216B.042.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:018, Section 5(2)(a) to revise the testing schedule for hepatitis B, in accordance with the 1990 revised recommendations from the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation provides for the licensure requirements for the operation and services of renal dialysis facilities.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the recommendations of the Centers for Disease Control regarding hepatitis B testing in dialysis centers. These recommendations call for more frequent testing of patients who have not been given, or have not responded to, hepatitis B vaccine, but less frequent testing of other patients and staff, resulting in cost savings to the dialysis centers.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

Department for Medicaid Services

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

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

(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 May 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., 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 alternative intermediate services for individuals with mental retardation or developmental disabilities are KRS 194.050, 42 CFR 441 Subpart G, and 42 USC 1396a, b, d, m.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:140. The Department for Medicaid Services intends to amend this administrative regulation to: Remove the language referring to the Office of the Inspector General as the survey agent, and establish an AIS-MR waiting list and due process procedures for eligible clients. These amendments should make the program more accessible to AIS-MR services by its clients.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes an equitable procedure for accessing AIS-MR services and implements due process procedures and its clients.

(d) The benefits expected from administrative regulation are: Equal access to services and clearly defined due process procedures.

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

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

(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 May 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., 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 home and community based waiver services

are KRS 194.050, 42 CFR 440.180, and USC 1396a, b, d, n.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:160, Home and community based waiver services to reflect the approved home and community based waiver amendments to:

1. Change the recertification process from every 6 months to every 12 months;
2. Delete the assessment summary face sheet form;
3. Increase respite care from $2,000 to $4,000 per recipient per year;
4. Allow respite care to be provided in the recipient's home or by the adult day health care center at the center;
5. Allow a physician to recommend the waiver services but to not actually be responsible for the development of the plan of care. The plan of care to be done by a team of a RN and a social worker or two RNs;
6. Clarify that home and community based waiver services shall not be available to recipients in personal care homes and only in family homes if services are not duplicated for which the family care home is responsible for providing; and
7. Revise the incorporated by reference manual.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the Medicaid coverage provisions relating to home and community based waiver services.

(d) The benefits expected from administrative regulation are: To amend the administrative regulation and the incorporated by reference manual to reflect the approved home and community based waiver amendments.

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

(1) **907 KAR 1:170**, Payments for home and community based waiver services.

(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 May 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., 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 the Medicaid Program reimbursement methodology for home and community based waiver services are KRS 194.050, 42 CFR 440.180, and USC 1396a, b, d, n.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:170, Payments for home and community based waiver services, to reflect the approved home and community based waiver amendments to:

1. Increase respite care from $2,000 to $4,000 per recipient per year;
2. Allow respite care to be provided in the recipient's home or by the adult day health care center at the center;
3. Adult day health care basic daily service unit shall be set at 37 1/2 percent of the average nursing facility reimbursement rate for routine services as set on July 1 of each year;
4. Case management services shall be subject to the 130 percent of the weighted median of the array of services Medicaid upper limit for reimbursement;
5. Respite care services and minor home adaptations shall be exempt from the 130 percent of the weighted median of the array of services Medicaid upper limit for reimbursement;
6. Delete respiratory therapy services from the home and community based waiver services; and
7. Incorporate by reference reimbursement manuals.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the Medicaid reimbursement methodology for home and community based waiver services.

(d) The benefits expected from administrative regulation are: To amend the administrative regulation to reflect the approved amendments to the home and community based waiver.

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

(1) **907 KAR 3:005**, Physicians' services.

(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 May 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., 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 physicians' services are KRS 194.050 and 42 CFR 440.50.

(b) This administrative regulation is being promulgated by the Department for Medicaid Services to replace the administrative regulation 907 KAR 1:009, Physicians' services, which was found deficient and will sunset upon adjournment of the General Assembly. This administrative regulation is not the same as the administrative regulation found deficient and is substantially different since it no longer contain the provision(s) found deficient. The incorporated by reference Physician Manual has been revised to correspond with the companion administrative regulation 907 KAR 3:010, Reimbursement for physicians' services, and unnecessary material has been removed.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to physicians' services for which payment 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: To protect the public health safety or welfare of Medicaid recipients by ensuring medically necessary physicians' services are available on a timely basis to the Medicaid eligible population.

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

(1) **907 KAR 3:010**, Reimbursement for physicians' services.

(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 May 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., 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 physicians' services are KRS 194.050, 42 CFR 440.50 and 447 Subpart B, and 42 USC 1396a-d.

(b) This administrative regulation is being promulgated by the Department for Medicaid Services to replace the administrative regulation 907 KAR 1:010, Payments for physicians' services, which was found deficient and will sunset upon adjournment of the General Assembly. This administrative regulation is not the same as the administrative regulation found deficient and is substantially different since it no longer contain the provision(s) found deficient. The resource based relative value scale units conversion factors are being increased effective July 1, 1996.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for establishing Medicaid Program reimbursements for physicians' services furnished to eligible Medicaid recipients.

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

CABINET FOR FAMILIES AND CHILDREN
Department for Transitional Support
Division of Management and Development

Date: April 15, 1996
Cabinet for Families and Children
Department for Transitional Support
Division of Management and Development

(1) **904 KAR 3:042**. Food Stamp Employment and Training Program.

(2) The Department for Transitional Support 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 May 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Acting General Counsel, 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 Transitional Support, Division of Management and Development, by writing to the Cabinet for Families and Children, 275 East Main Street, 3rd Floor West, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Food Stamp Employment and Training Program is KRS 194.050 and 7 CFR 273.7.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:041, Food Stamp Employment and Training Program to correct a deficiency found by the Interim Joint Committee on Health and Welfare on March 15, 1995. The deficiency was as a result of adding an age factor to the priority status criteria listed in Section 3, subsection (2). We are removing that age factor with this amendment.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment will remove the age factor from the priority status criteria listed in Section 3, subsection (2) of this administrative regulation.

(d) The benefits expected from administrative regulation are: These provisions are necessary to correct the deficiency.

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 22:130E

200 KAR 22:130E should be enacted as an emergency administrative regulation to implement the provisions of KRS 18A.430(1) which require that each pilot agency participating in the Pilot Personnel Program shall develop and promulgate by administrative regulation a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. This administrative regulation promulgates the Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations, 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 Cabinet for Health Services, Department for Health Services, Division of Disability Determinations 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 22:130E. Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations for Use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)
STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)
EFFECTIVE: April 1, 1996
NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. Pursuant to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This administrative regulation establishes the Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Cabinet for Health Services, Department for Health Services, Division of Disability Determinations 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 Cabinet for Health Services, Department for Health Services, Division of Disability Determinations shall comply with the "Employee Handbook For Division of Disability Determinations."

Section 2. Incorporation by Reference. (1) The "Employee Handbook For Division of Disability Determinations" revised January 1996, is incorporated by reference.

(2) This document may be inspected, copied, or obtained from Graham Duvall of the Division of Disability Determinations at the First City Complex, 102 Athletic Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN P. MCCARTY, Secretary
APPROVED BY AGENCY: March 27, 1996
FILED WITH LRC: April 1, 1996 at noon
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 Cabinet for Health Services, Department for Health Services, Division of Disability Determinations 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 Cabinet for Health Services, Department for Health Services, Division of Disability Determinations 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 promul-

gated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Under KRS 18A.430(1)(c), employment manuals developed by the pilot agencies are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. Once the employment manuals are promulgated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

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

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

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

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

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

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

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation only applies to employees in the Cabinet for Health Services, Department for Health Services, Division of Disability Determinations who are participating in the Pilot Personnel Program.

STATEMENT OF EMERGENCY
201 KAR 10:050E

This emergency administrative regulation raises the fees which the Kentucky State Board of Examiners and Registration of Landscape Architects may charge candidates who take the Landscape Architecture Registration Examination (LARE). The national examination provider (Council of Landscape Architect Registration Boards) has increased the fees which they charge the state board, requiring the state board to seek an emergency administrative regulation change prior to the next examination administration in June, 1996. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at a later date.

PAUL E. PATTON, Governor
JOHN L. CARMAN, President

KENTUCKY STATE BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS

201 KAR 10:050E. Fees.

RELATES TO: 323A.060, 323A.100(1), (4)
STATUTORY AUTHORITY: KRS 323A.060, 323A.210(2)(b)
EFFECTIVE: March 22, 1996
NECESSITY AND FUNCTION: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish [~~by rules the~~] fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following fees shall be paid. Fees shall not be refundable.

(1) Renewal fees: [~~$100.~~]

(a) Active license - $150.

(b) Inactive license - $25.

(2) Duplicate certificate: $10.

(3) Issuance of original license certificate: $200.

[~~(4) Renewal certificate: renewal fee established in subsection (1) of this section, plus fee for delayed renewal established by KRS 323A.100(1).~~]

(4) [~~(5)~~] Restoration of a suspended license: restoration fee of $200 and $200 renewal fee with penalty as provided by KRS 323A.100. [~~revoked for failure to renew:~~

~~(a) Renewal fee established in subsection (1) of this section, plus fee for delayed renewal established by KRS 323A.100(1).~~

~~(b) If the board has determined that the certificant be returned to the status of an applicant, the fee for restoration shall include other fees required of applicants.~~]

(5) [~~(6)~~] Issuance of a license on reciprocity basis: $200.

(6) [~~(7)~~] Examination: [~~$100 per section.~~]

(a) Processing fee. A fifty (50) dollar nonrefundable processing fee shall be:

1. Submitted with a new application for examination; and
2. Deducted from the total exam fee.

(b) Examination sections:

1. Section 1: $48;
2. Section 2: $78;
3. Section 3: $126;
4. Section 4: $126;
5. Section 5: $126;
6. Section 6: $126; and
7. Section 7: $57.

JOHN L. CARMAN, President
APPROVED BY AGENCY: March 11, 1996
FILED WITH LRC: March 22, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Jane A. Gardner

(1) Type and number of entities affected: This administrative regulation will affect approximately 20 individuals per year. The individuals affected are those candidates who will take the Landscape Architectural Registration Examination.

(2) Direct and indirect costs or savings on the: The direct cost to the candidates for the entire examination will increase $177.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: This administrative regulation amendment will allow the Landscape Architect Board to cover the increasing fees of examination administration.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation amendment will increase fees to the board, however will be offset by the costs of administration of the examinations.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will require no revenue to implement or enforce.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact in any specific geographical areas as this regulation applies to any examination candidate.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are needed as this amendment addresses a cost increase by the provider of the examination currently administered.

(8) Assessment of expected benefits: This regulation will have no effect on public health or environmental welfare.

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

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts or duplications within the statutes or government policy. KRS 323A.060 and 323A.210(2)(b) provides statutory authority to determine fees and adopt necessary regulations.

(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: No additional information or comments.

(11) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all examination candidates.

STATEMENT OF EMERGENCY
301 KAR 2:140E

The Kentucky Department of Fish and Wildlife Resources has implemented an automated system for selling hunting and fishing licenses. This system requires a different method of tagging turkeys. It is necessary to file an emergency amendment to this administrative regulation to implement the new tagging requirements for the 1996 spring wild turkey season in April. This emergency administrative regulation will not be replaced by an ordinary administrative regulation, but the provisions of this amendment will be incorporated into 301 KAR 2:140 the next time this administrative regulation is permanently amended.

PAUL PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

301 KAR 2:140E Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390, 150.990

STATUTORY AUTHORITY: KRS 150.025

EFFECTIVE: April 11, 1996

NECESSITY AND FUNCTION: To assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state. This amendment is necessary to change carcass tagging requirements to conform to the department's new licensing system. [~~designate currently appropriate turkey hunting requirements and seasons for specific counties and wildlife management areas, and to comply with the wording and formatting requirements of KRS Chapter 13A.~~]

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Quota hunt" means a hunt whose participants register in advance and are selected by a drawing.

(3) "Statewide seasons" mean the provisions of Sections 1 through 7 of this administrative regulation.

(4) "Youth hunt" means a hunt open to persons at least ten (10) years old but who have not reached their 16th birthday by the day of the hunt.

(5) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

Section 2. Seasons and Counties Open to Wild Turkey Hunting. (1) Season dates and shooting hours.

(a) Spring: gun and archery, fourteen (14) consecutive days beginning the third Wednesday in April; one-half (1/2) hour before sunrise until 1 p.m.

(b) Archery only, October 1 through November 30, except during the modern gun deer season; daylight hours.

(2) During the 1995 spring and fall seasons, the following counties and portions of counties are open to turkey hunting: Adair, Allen east of Highway 31E, Anderson, Ballard, Barren north of I-65 and Barren south of the Cumberland Parkway, Bath south of I-64, Bell, Boone, Boyd south of I-64, Boyle except west of Highway 68, Bracken, Breathitt east of Highway 15, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Campbell, Carroll, Carter north of I-64, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess north of Highway 54, Edmonson, Elliott, Estill, Fayette, Floyd except east of Highway 80 and south of Highway 460, Franklin except south of Highway 12-O'Nan's Bend Road and west of Kentucky River, Fulton, Gallatin, Garrard, Grant north of Highway 22 and west of I-75, Graves, Grayson, Green, Hancock southeast of Highway 1389, Hardin, Harlan, Harrison east of Highway 27, Hart, Henry, Henderson west of Highway 41, Hickman, Hopkins, Jackson north of Highway 30, Jefferson, Jessamine south of Highway 169, Johnson north of Highway 460 and west of Highway 23, Kenton, Knott, Knox south of

Highway 25E and east of Highway 11, and north of Highway 25E and east of Highway 223, Larue except south of Highway 61 and west of Highway 31E, Laurel west of I-75, Lawrence, Lee west of Highway 11, Letcher,, Lincoln, Livingston, Logan, Lyon, Madison east of I-75, Magoffin south of Mountain Parkway west of Salyersville and south of Highway 114 east of Salyersville, Marion, Marshall, Martin, Mason, McLean south of Highway 138 and west of Highway 81, McCracken, McCreary, Meade, Menifee, Mercer except south of Highway 1160 and west of Highway 127, Metcalfe, Monroe, Morgan north of the Licking River, Muhlenberg, Nelson, Ohio, Oldham, Owen, Owsley, Pendleton, Perry, Pike east of Highway 23, Powell, Pulaski except north of Highway 80 and west of Highway 461, Robertson, Rockcastle west of I-75 and Rockcastle east of Highway 1955, Rowan, Russell, Scott east of I-75, Shelby, Simpson west of Highway 31W, Spencer, Taylor, Todd, Trigg, Trimble, Union north of Highway 360 east of Uniontown, Warren north of Highway 80 and west of Highway 185, Washington, Wayne, Webster west of Highway 41A, Whitley north of the Cumberland River and west of I-75, Wolfe north of Mountain Parkway and west of Highway 746, and Woodford.

(3) All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 8 of this administrative regulation.

(4) In 1996 and subsequent years, all counties shall be open to wild turkey hunting.

Section 3. Bag and Possession Limits. Except as specified in Section 8 of this administrative regulation and by 301 KAR 2:111, a person shall not take more than:

(1) One (1) turkey per day;

(2) Two (2) turkeys with visible beards during the spring season;

(3) One (1) turkey of either sex during the fall archery season.

Section 4. Juvenile Hunters, Tagging and Checking. (1) An adult shall accompany and maintain control of turkey hunters under sixteen (16) years of age.

(2) After taking wild turkeys, and before moving the carcass, persons shall:

(a) Cut, punch, or mark with ink or indelible pencil the number and month on the carcass tag portion of the turkey permit corresponding to the current date. [~~Immediately attach the transportation tag portion of the turkey permit to the carcass.~~]

(b) Attach the tag to the carcass:

1. While transporting the turkey by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.

(c) Have the turkey checked on the same day it was taken:

1. At a check station; or

2. By an authorized employee of the department.

(d) [~~(c)~~] Fill out a game check card and return it to the person checking the turkey.

(e) [~~(d)~~] Keep the hunter's portion of the game check card in possession until the turkey is processed.

(f) [~~(e)~~] Attach to turkeys taken to a taxidermist:

1. The taxidermy portion of the game check card;

2. A Ft. Campbell game check card; or

3. A Land Between the Lakes game check card.

(g) [~~(f)~~] Check turkeys before transporting them out of Kentucky.

(3) [~~(4)~~] Persons taking turkeys on wildlife management areas shall follow the tagging and checking requirements in Section 8 of this administrative regulation.

Section 5. Firearms and Archery Equipment. Persons hunting wild turkey shall not use or carry:

(1) Rifles or handguns.

(2) Shotguns larger than ten (10) gauge or smaller than twenty (20) gauge.

(3) Shot larger than Number Four (4).

(4) Shotgun slugs.

(5) Firearms during archery-only seasons.

(6) Crossbows, except on the Pioneer Weapons Area.

(7) Barbed broadheads.

(8) Broadheads smaller than seven-eights (7/8) inch wide.

(9) Arrows with chemical treatments or attachments containing chemicals.

Section 6. Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

(a) While bait is present; or

(b) For thirty (30) days after the bait has been removed.

(2) Persons may hunt wild turkeys on areas where grains, feed or other substances exist as the result of:

(a) Bona fide agricultural practices; or

(b) Manipulating a crop for wildlife management purposes, provided that grain, feed or other substances once removed from a field are not returned to or scattered on the field.

Section 7. Turkey Hunting Restrictions. (1) Turkey hunters:

(a) Shall not use dogs.

(b) Shall not hunt from boats.

(c) Shall not use electronic calls.

(d) May use hand- or mouth-operated calls.

(e) Shall not use live decoys.

(f) Shall not take roosting turkeys.

(2) Persons shall not mimic the sound of a turkey from March 1 until the opening of the spring season in areas open to hunting where turkeys are reasonably expected to occur.

(3) Persons shall not take turkeys by means other than those specified in this administrative regulation.

Section 8. Seasons and Exceptions on Wildlife Management Areas. (1) Statewide seasons apply to wildlife management areas located in counties or portions of counties listed in Section 2 of this administrative regulation unless otherwise specified in this section.

(2) Persons shall not hunt wild turkeys on the areas listed in this section except on the dates specified.

(3) Turkeys listed as bonus birds:

(a) Do not count against statewide limits.

(b) Do not require a state transportation tag be attached to the carcass.

(4) Ballard Wildlife Management Area, Ballard County.

(a) Season. Quota youth hunt, the weekend preceding the third Wednesday in April.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the first Saturday in April on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) Turkey hunters:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(5) Fort Campbell Wildlife Management Area, Christian and Trigg Counties.

(a) Season: the first Saturday in April through the second Sunday in May.

(b) Turkeys taken on Fort Campbell are bonus birds.

(c) Turkey hunters:

1. Shall obtain a postcombination hunting-fishing permit before hunting.

2. Shall hunt only during daylight hours.

3. Shall not take more than two (2) turkeys per spring season.

4. Shall attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area, Hardin, Bullitt and Meade Counties.

(a) Seasons: Saturdays and Sundays in April and the first two (2)

Saturdays and Sundays in May.

(b) Turkeys taken on Fort Knox are bonus birds.

(c) Turkey hunters:

1. Shall hunt in assigned areas.

2. Shall check turkeys by 2 p.m. on the day harvested.

3. Shall not take more than one (1) turkey per spring season.

(7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons: quota youth hunts.

1. The weekend preceding the third Wednesday in April.

2. The weekend following the fourth Wednesday in April.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the first Saturday in April on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) Turkey hunters:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(8) Green River Wildlife Management Area, Adair and Taylor Counties. Statewide seasons apply except as noted in this subsection.

(a) Quota youth hunt, the weekend preceding the third Wednesday in April.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the first Saturday in April on the area.

(c) Shooting hours for the youth hunt are one-half (1/2) hour before sunrise until noon.

(d) Persons participating in the youth hunt:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(9) Higginson-Henry Wildlife Management Area, Union County.

(a) Seasons, archery only.

1. The third Wednesday in April for nineteen (19) consecutive days.

2. October 1 through November 30, except during gun deer hunts.

(b) Turkey hunters shall check in and check out daily.

(10) Land Between the Lakes, Trigg and Lyon Counties.

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April and ending before the third Wednesday in April.

2. Fourteen (14) consecutive days beginning on the third Wednesday in April.

(b) Turkey hunters:

1. Shall check in and out.

2. Shall hunt in assigned areas.

3. Shall check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

4. Shall affix a Land Between the Lakes game check card and a state transportation tag to the carcass.

5. Shall take turkey only during daylight hours.

6. Shall not take more than one (1) turkey in the spring.

(11) Pioneer Weapons Wildlife Management Area, Bath and Menifee Counties. Statewide seasons apply except that turkey hunters:

(a) Shall not use breech-loading shotguns.

(b) May use crossbows with working safety devices.

(12) Reelfoot National Wildlife Refuge, Fulton County.

(a) Season: quota hunt, the Friday closest to April 1 for three (3) consecutive days.

(b) Turkey hunters:

1. Shall not take more than one (1) turkey.

2. Shall obtain Reelfoot permits before hunting.

(13) Redbird Wildlife Management Area, Clay and Leslie Counties. Statewide seasons apply.

(14) Swan Lake Wildlife Management Area, Ballard County, is closed to turkey hunting.

(15) West Kentucky Wildlife Management Area, McCracken County, is closed to turkey hunting.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 1, 1996
FILED WITH LRC: April 11, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 15,000 persons hunt wild turkey 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. The amendment to this administrative regulation will 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. The amendment to this administrative regulation will have no impact on cost of doing business.

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

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

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

(6) To the extend 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: Implemented statewide.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative tagging methods were examined during the development of the automated licensing system. No other method than the one adopted allowed carcass tags to be issued by the system.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Possibly

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

(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 requires hunters to mark on the carcass tag the date they took a turkey, and to affix the tag if the carcass if transported by vehicle or if it leaves the hunter's possession while in the field. Because of the department's automated licensing system, adhesive-backed carcass tags can no longer be used.

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

STATEMENT OF EMERGENCY
601 KAR 13:090E

The administrative regulation, 601 KAR 13:011, governing the Medical Review Board expired on April 15, 1996. It had been found deficient by the Administrative Regulations Review Subcommittee because it did not contain standards for the Transportation Cabinet and the Medical Review Board to follow when evaluating the driving privilege of a person with a mental or physical disability which may adversely affect his ability to safely operate a motor vehicle. This administrative regulation is one (1) of two (2) which will replace 601 KAR 13:011. It contains the operating mechanism for the Medical Review Board. Both administrative regulations are needed on an emergency basis so that the Transportation Cabinet will not act in an arbitrary and capricious manner while trying to protect the traveling public from unsafe drivers. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Review Compiler on April 15, 1996.

PAUL E. PATTON, Governor
FRED N. MUDGE, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:090E. Medical Review Board; basis for examination, evaluation, tests.

RELATES TO: KRS 186.411, 186.444, 186.570

STATUTORY AUTHORITY: KRS 186.400, 186.411, 186.444, 186.570

EFFECTIVE: April 15, 1996

NECESSITY AND FUNCTION: The Medical Review Board has existed through administrative regulation since June, 1964. The 1994 General Assembly passed two (2) bills, SB 205 and HB 417, mandating the establishment of the Medical Review Board and authorizing the Transportation Cabinet to promulgate an administrative regulation to implement the Medical Review Board. Statutory authority was necessary because the Administrative Regulations Review Subcommittee determined in late 1993 that the Transportation Cabinet does not have the specific authority necessary to promulgate an administrative regulation relating to the Medical Review Board and, therefore, 601 KAR 13:010 expired on April 15, 1994. Because of a slight conflict between SB 205 and HB 417, the Transportation Cabinet is including in this administrative regulation clarification of the differences between the two (2) bills.

Section 1. (1) The Medical Review Board shall be chaired by the Commissioner of the Department of Vehicle Regulation of the Transportation Cabinet or his representative.

(2) A quorum of the Medical Review Board shall be not less than three (3) physicians licensed to practice medicine in the Commonwealth of Kentucky.

(3) Appointees to the Medical Review Board who are not physicians licensed pursuant to KRS Chapter 311 may have their appointment restricted to a specified area of expertise.

(4) The Commissioner of the Department of Vehicle Regulation or his representative shall prescribe the time and place for the board to meet.

(5) The nonstate government members of the board who participate in a meeting shall be paid $200 each day or part of a day and reimbursed for necessary expenses incurred in attending the meeting.

Section 2. (1) When the Commissioner of the Department of Vehicle Regulation or his representative receives notice that one (1) or more of the conditions listed in Section 4 of this administrative regulation exists in a person and that the person's physical or mental condition may render it unsafe for him to operate a motor vehicle upon the public highways, the commissioner shall refuse to issue an operator's license to the person or he shall suspend the existing driving privilege of the person unless the person submits to an examination by a qualified physician within forty-five (45) days of notification of the commissioner's intentions.

(2) If the department deems that an examination by a qualified physician is necessary, the required medical examination shall be conducted at the person's own expense by any licensed physician of his choice.

(3) The examining physician shall report within forty-five (45) days the results of his examination directly to the Division of Driver Licensing on a form furnished by the Department of Vehicle Regulation. The Medical Review Board Form TC 94-86, revised in November 1995 is incorporated by reference in Section 5 of this administrative regulation.

(4)(a) As soon as possible after receipt of the completed form, the Department of Vehicle Regulation shall evaluate it according to the medical standards set forth in 601 KAR 13:100.

(b) The Department of Vehicle Regulation shall submit any case to the Medical Review Board in which medical or rehabilitation expertise is needed to evaluate the driving ability of a person.

(c) The Medical Review Board may make recommendations to the Department of Vehicle Regulation for further medical examination, testing, or restriction of the person's driving privilege, or denial of driving privilege.

(c) If the Medical Review Board recommends further examination or investigative testing or if the Department of Vehicle determines it to be necessary, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person of the date by which he shall comply in order to retain or obtain his driving privilege.

Section 3. (1) If the Medical Review Board or Department of Vehicle Regulation, pursuant to the evaluation in Section 2(3) of this administrative regulation, recommends total suspension of a person's driving privilege or any limitations thereon, the Commissioner of the Department of Vehicle Regulation or his representative shall notify the person at the last known address of the person that this action will be taken unless a written request for an informal hearing before the board is received within twenty (20) days following the first class mailing of the notice. The person shall also be informed of his right to an immediate administrative hearing pursuant to the provisions of KRS Chapter 13B.

(2) The informal hearing shall be scheduled as early as practicable at a time and place designated by the commissioner or his representative and notice shall be mailed to the person involved no later

than ten (10) days prior to the hearing date.

(3) The commissioner or his representative shall preside at the hearing before the Medical Review Board and at least three (3) physician members shall be present.

(4) The presiding officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

(5) The scope of the hearing shall be limited to the presentation of the evidence upon which the Medical Review Board made their recommendation and any medical evidence the petitioner wishes to present in explanation or refutation of this evidence.

(6) Evidence may be presented at the hearing in the form of depositions.

(7) All testimony at the hearing shall be recorded and together with any depositions or exhibits introduced at the hearing shall form the complete record.

(8) Within ten (10) working days after the hearing, the commissioner shall issue a decision and this shall be promptly forwarded to the petitioner.

(9) In the notice provided pursuant to subsection (8) of this section, the petitioner shall be informed of his right to an administrative hearing pursuant to the provisions of KRS Chapter 13B.

Section 4. The Commissioner of the Department of Vehicle Regulation or his representative shall promptly notify the person involved to submit to the physical examination set out in Section 2 of this administrative regulation when one (1) or more of the following conditions exists:

(1) Driver has indicated that he "blacked out", lost consciousness or suffered a seizure prior to a reportable motor vehicle accident;

(2) Driver has been named in an affidavit by at least two (2) citizens as being incapable of properly operating a motor vehicle due to physical or mental infirmities;

(3) Driver has been reported by a physician as being incapable of driving safely due to physical or mental condition or due to medication prescribed for an extended time;

(4) Driver has been reported by a law enforcement officer or a Kentucky State Police license examiner who has reason to believe or who has observed an individual driving or behaving in an erratic or dangerous manner which indicates a possibility of a physical or mental disability which may impair his driving ability;

(5) Applicant for a motor vehicle operator's license or for its renewal indicates on the application form that he has a physical or mental disability which may impair his driving ability;

(6) Driver's official record kept by the Department of Vehicle Regulation indicates a possibility of physical or mental impairment;

(7) Driver has been reported by a commonwealth attorney, county attorney, county clerk, circuit clerk, sheriff, or judge as being incapable of driving due to a physical or mental impairment; or

(8) Driver has reported to the Transportation Cabinet or Medical Review Board that he has a mental or physical impairment.

Section 5. (1) Medical Review Board Form TC 94-86 revised November 1996 is incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference in this administrative regulation can be viewed, copied, or obtained from the Division of Driver Licensing. The address is 501 High Street, Second Floor, Frankfort, Kentucky 40601. The telephone number is (502) 564-5384. The business hours are 8 a.m. to 4:30 p.m. on weekdays.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: April 8, 1996
FILED WITH LRC: April 15, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: 900 new cases are presented to the Medical Review Board annually. Sixty of these have an administrative hearing before the board. 600 of these had their driving privilege withdrawn. This 600 number includes the persons who in essence did not contest the idea of surrendering their driver's license. Most of these just sent in their license without even returning the medical forms. Over 5,000 cases are reviewed 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 will be implemented, to the extent available from the public comments received: None anticipated. However, no public comment hearing was held. It should be noted that each new case will be asked to have a medical examination which costs between $50 and $200. Most will not actually have the medical exam. They are aware they should not be driving or have just been using the driver's license for identification purposes.

(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 anticipated. However, no public comment hearing was held.

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

1. First year following implementation: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly reported each year.

2. Second and subsequent years: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly reported each year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It costs $75,000 annually to operate the Medical Review Board including its administrative costs and staff.

2. Continuing costs or savings: It costs $75,000 annually to operate the Medical Review Board including its administrative costs and staff.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: A formal report must be prepared on each of the hearings held. In addition, several personal letters must be sent to each person with a disability brought under the purview of the Medical Review Board.

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

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

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits: Provision of a mechanism to allow reporting of persons with disabilities so that their driving ability can be evaluated.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be an adverse effect on highway safety.

(c) If detrimental effect would result, explain detrimental effect:

Since 601 KAR 13:011 expired on April 15, 1996, without the implementation of this administrative regulation and 601 KAR 13:100 there would be no mechanism in Kentucky to remove drivers with disabilities adversely affecting their ability to safely operate a motor vehicle from the highways.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 186.444 and 186.570 conflict slightly with each other regarding the fee to be paid to the Medical Review Board members and the qualifications for the board members. This administrative regulation conflicts with KRS 186.570 in regard to the per diem fee paid to the board members (but it is in accordance with KRS 186.444). The administrative regulation conflicts with KRS 186.444 in regard to the qualifications for the board members (but is in accordance with KRS 186.570.)

(a) Necessity of proposed regulation if in conflict: The language in KRS 186.444 and 186.570 which conflict were passed in the same legislative session. Since the Statutes Revisor said he did not have the authority to resolve conflicts between separate statutes, the only way to resolve the conflicts is by administrative regulation.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. (Explain why tiering was or was not used) The administrative regulation provides a tiering of the reporting of the cases to the Medical Review Board.

STATEMENT OF EMERGENCY
601 KAR 13:100E

The administrative regulation, 601 KAR 13:011, governing the Medical Review Board expired on April 15, 1996. It had been found deficient by the Administrative Regulations Review Subcommittee because it did not contain standards for the Transportation Cabinet and the Medical Review Board to follow when evaluating the driving privilege of a person with a mental or physical disability which may adversely affect his ability to safely operate a motor vehicle. This administrative regulation is one (1) of two (2) which will replace 601 KAR 13:011. It contains the standards the Transportation Cabinet and Medical Review Board shall use when evaluating a person's ability to safely operate a motor vehicle. Both administrative regulations are needed on an emergency basis so that the Transportation Cabinet will not act in an arbitrary and capricious manner while trying to protect the traveling public from unsafe drivers. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Review Compiler on April 12, 1996.

PAUL E. PATTON, Governor
FRED N. MUDGE, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:100. Medical standards for operators of motor vehicles.

RELATES TO: KRS 186.411, 186.440, 186.444, 186.570
STATUTORY AUTHORITY: KRS 186.444, 186.570
EFFECTIVE: April 15, 1996

NECESSITY AND FUNCTION: KRS 186.570 requires the Transportation Cabinet to withhold driving privileges from an individual who has a mental or physical disability that makes it unsafe for him to drive upon the highways. KRS 186.440 requires that a motor vehicle operator's license not be issued to an individual who is a habitual drunkard or drug addict. KRS 186.411 requires that a person with a seizure condition be seizure-free for ninety (90) days prior to licensing. This administrative regulation sets forth the standards to be used by the Transportation Cabinet in determining who is unsafe to operate a motor vehicle because of a mental or physical disability.

Section 1. Definitions. (1) "Altered consciousness" means a state of awareness characterized by loss or distortion of the impressions made by the senses or inability to respond to the impressions made by the senses.

(2) "Assessment" means an examination of a person's use of chemicals for the person by an approved public treatment facility.

(3) "Chemical" means alcohol, a drug, or a controlled substance as defined in KRS Chapter 218A.

(4) "Cognition" means the ability to think, perceive, and remember.

(5) "Co-morbid" means that more than one (1) condition is present at the same time.

(6) "Corrective lens" means an ophthalmic lens, whether an eyeglass, contact lens or single lens system, that corrects the refraction error or other optically correctable deficiency of the eye.

(7) "Driving evaluation" means a test conducted to determine if a person adequately compensates for his medical, mental, or physical condition or functional impairment.

(8) "Episode" means any incident or segment of time involving altered consciousness or loss of bodily control.

(9) "Field of vision" means the entire horizontal and vertical planes a person has for each eye without shifting the gaze.

(10) "Functional ability" means the degree of cognitive, mental or emotional, sensorimotor and sensory capability in performing activities of daily living, including safely performing the tasks of driving.

(11) "Licensing action" means any action by the Transportation Cabinet involving the denial, cancellation, restriction, or issuance of a motor vehicle operator's license under KRS Chapter 186.

(12) "Loss of bodily control" means involuntary movements of the body characterized by muscle spasms or muscle rigidity, or loss of muscle tone or muscle movement.

(13) "Medical condition" means any physical, mental, or emotional condition which affects a person's health for which a person is receiving medical treatment, or for which medical treatment is usually prescribed.

(14) "Mental or emotional function" means interaction and communication skills, adaptive behavior or coping capacity, and orientation.

(15) "Review board" means the Medical Review Board established under KRS Chapter 186.

(16) "Sensory function" means vision, hearing, touch, smell, or vibration sense.

(17) "Vision specialist" means a person licensed to practice optometry as defined by KRS Chapter 320, or a physician licensed pursuant to KRS Chapter 311.

Section 2. General Requirements. (1) If the Department of Vehicle Regulation learns that a person applying for, renewing, or holding a motor vehicle operator's license may have a medical condition which may affect safe driving, the department may require the person to provide the department with medical information about the person's medical condition. The department shall review the medical information using the standards specified in this administrative regulation.

(2) A person holding a Kentucky operator's license or instruction permit shall report to the department medical conditions that adversely affect his driving skills.

Section 3. Information to be Considered in Licensing Actions. Pursuant to 601 KAR 13:090, the Medical Review Board when making recommendations, and the department when taking licensing

action, may consider the following information:

(1) Any medical condition affecting the person including, but not limited to:

(a) History of illness;

(b) Severity of symptoms and prognosis;

(c) Complications or co-morbid conditions, or both;

(d) Treatment and medications, including effects and side effects, and the person's knowledge and use of medications;

(e) Results of medial tests and reports of laboratory findings;

(f) Physician's medical report;

(g) Physician's recommendations with regard to functional impairment; and

(h) Physicians's identification of risk factors.

(2) Reports of driver condition or behavior;

(3) The results of any driving evaluation of the person;

(4) Alcohol or drug assessment reports by an agency;

(5) Traffic accidents that may have been caused in whole or in part by a medical condition;

(6) Vision specialist's report;

(7) A person's failure to provide requested information to the department; or

(8) A report from a rehabilitation specialist.

Section 4. Conditions Affecting Cardiovascular Function. (1) With respect to conditions affecting cardiovascular function, the Medical Review Board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to the following:

(a) Cardiac dysfunction;

(b) Arrhythmias; and

(c) Other cardiac or circulatory disorder or dysfunction.

(2) The department or the Medical Review Board may require a person to provide information on the person's cardiovascular functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cardiovascular function of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following cardiovascular function criteria:

(a) There shall not be current symptoms of coronary artery disease, such as unstable angina, dyspnea, or pain at rest, which interfere with safe driving;

(b) There shall not be a cause of cardiac syncope present, including ventricular tachycardia or fibrillation, which is not successfully controlled;

(c) There shall not be congestive heart failure that limits functional ability;

(d) There shall not be cardiac rhythm disturbances which are not successfully controlled;

(e) There shall not be an automatic implantable cardioverter defibrillator, unless the device is assessed by an electrophysiologist as not interfering with safe driving;

(f) There shall not be medications interfering with safe driving; and

(g) There shall not be valvular heart disease or malfunction of prosthetic valves that interferes with safe driving.

Section 5. Conditions Affecting Cerebrovascular Function. (1) With respect to conditions affecting cerebrovascular function, the Medical Review Board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

(a) Cerebrovascular accident; and

(b) Other cerebrovascular disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's central nervous system functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting cerebrovascular functions of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following cerebrovascular function criteria:

(a) There shall not be sensorimotor deficit preventing safe driving;

(b) There shall not be impairment of reasoning or judgement preventing safe operation of a vehicle; and

(c) There shall not be medications interfering with the person's ability to operate a motor vehicle safely.

Section 6. Conditions Affecting Endocrine Function. (1) With respect to conditions affecting endocrine function, the Medical Review Board, when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

(a) Diabetes mellitus; and

(b) Other endocrine disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's endocrine functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting endocrine functions of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet all of the following endocrine function criteria:

(a) There shall not be diabetic neuropathy or other complication which interferes with safe driving;

(b) There shall not be frequent and functionally impaired hypoglycemic reactions; and

(c) There shall not be evidence of use of alcohol or other drugs to an extent that interfere with the person's prescribed treatment program for the condition.

Section 7. Conditions Affecting Musculoskeletal Function. (1) With respect to conditions affecting musculoskeletal function, the Medical Review Board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

(a) Rheumatoid arthritis;

(b) Paralysis; and

(c) Other musculoskeletal disorder or dysfunction.

(2) The department or Medical Review Board may require information on a person's musculoskeletal functional abilities and disorders.

(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the applicable medical review standards for conditions affecting musculoskeletal function of this subsection and a person who applies for, renews, or holds a motor vehicle operator's license shall meet of the following musculoskeletal function criteria:

(a) Pain shall not interfere with the person's ability to safely operate a motor vehicle;

(b) The person's operation of a vehicle in a driving evaluation demonstrates adequate compensation for any weakness or limitations in range of motion or mobility; and

(c) There shall not be effects or side effects of medication interfering with safe driving.

Section 8. Conditions Affecting Neurological or Neuromuscular Function. (1) With respect to conditions affecting neurological or neuromuscular function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:

(a) Central nervous system diseases or disorders;

(b) Demyelinating diseases;
(c) Muscular diseases or disorders; and
(d) Seizure disorders.
(2) The department or Medical Review Board may require information on neurological or neuromuscular functional abilities or disorders.
(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting neurological or neuromuscular function of this subsection and a person who applies for, renews, or holds for motor vehicle operator's license shall meet all of the following neuromuscular function criteria:
(a) There shall not have been a seizure episode as set forth in KRS 186.411;
(b) The person adequately compensates for any paralysis or sensory deficit when operating a vehicle;
(c) Fatigue, weakness, muscle spasm or tremor at rest does not impair safe driving;
(d)There shall not be effects of or side effects of medication that interferes with safe driving; and
(e) There shall not be a decline in cognition to an extent that interferes with safe driving.

Section 9. Conditions Affecting Mental or Emotional Function. (1) With respect to conditions affecting psychosocial, mental or emotional function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:
(a) Substance and alcohol abuse; and
(b) Other mental or emotional disorder or dysfunction.
(2) The department or Medical Review Board may require information on mental or emotional functional abilities and disorders.
(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting mental and emotional function of this subsection and a person who applies for, renews, or holds any classification of operator's license shall meet all of the following mental and emotional function criteria:
(a) There shall not be dementia that is unresponsive to treatment;
(b) There shall not be a behavior disorder with threatening or assaultive behavior at the time of application;
(c) There shall not be a delusional system which interferes with safe driving;
(d) There shall not be a suicidal tendency;
(e) There shall not be an impairment of judgement that interferes with safe driving;
(f) There shall not be an active psychosis that interferes with safe driving; and
(g) There shall not be effects or side effects of medication that interferes with safe driving.

Section 10. Conditions Affecting Respiratory Function. (1) With respect to conditions affecting respiratory function, the review board when making recommendations, and the department when taking licensing action, may consider disorders including, but not limited to, the following:
(a) Chronic obstructive pulmonary diseases; and
(b) Any other respiratory disorder or dysfunction.
(2) The department or Medical Review Board may require information on respiratory functional abilities and disorders.
(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting respiratory function of the subsection and a person who applied for, renews, or holds a motor vehicle operator's license shall meet all of the following respiratory function criteria:
(a) The person does not require medication that interferes with driving; and
(b) There shall not be dyspnea that interferes with safe driving.

Section 11. Conditions Affecting Vision and Sensory Function. (1) With respect to conditions affecting sensory function, the review board when making recommendations, and the department when taking licensing action, may consider conditions including, but not limited to, the following:
(a) Vision loss; and
(b) Any other ocular or sensory disorder or dysfunction.
(2) The department or Medical Review Board may require information on ocular and sensory functional abilities and disorders.
(3) A motor vehicle operator's license shall not be issued to, renewed by, or held by a person who does not meet the medical review standards for conditions affecting sensory functions of this subsection and a person who applies for, renews, or holds any classification of operator's license shall meet all of the following criteria:
(a) Visual acuity of at least 20/60 or better in at least one (1) eye with single lens system; and
(b) Binocular horizontal field of vision of at least thirty-five (35) degrees to the left and right side of fixation and a binocular vertical field of vision of at least twenty-five (25) degrees above and below fixation.

Section 12. License Restrictions. (1) The department may restrict a person's operating privilege based on any of the following:
(a) A recommendation of a physician or vision specialist;
(b) The results of a driving examination or evaluation performed by the Kentucky State Police or a rehabilitation specialist or facility; or
(c) Recommendation of the Medical Review Board.
(2) License restrictions may require a person to:
(a) Wear corrective lenses;
(b) Use special equipment or specially equipped vehicles;
(c) Operate only during daylight hours;
(d) Restrict the driving area; or
(e) Restrict the motor vehicle operating privilege in any other manner which the department deems necessary for safety purposes.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: April 8, 1996
FILED WITH LRC: April 15, 1996 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen
(1) Type and number of entities affected: 900 new cases are presented to the Medical Review Board annually. Over 5,000 cases are reviewed annually. All 5900 individuals are affected by the standards set forth in this administrative regulation.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated. However, no public comment hearing was held.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None anticipated. However, no public comment hearing was held.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly

reported each year. However, that is the requirement of 601 KAR 13:090. This administrative regulation just establishes the standards for evaluation of the drivers.

2. Second and subsequent years: The result of approximately 200 physical examinations must be documented by the physician and the forms sent to the Medical Review Board for the persons newly reported each year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It costs $75,000 annually to operate the Medical Review Board including its administrative costs and staff.

2. Continuing costs or savings: It costs $75,000 annually to operate the Medical Review Board including its administrative costs and staff.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None as a result of this administrative regulation. However, in regard to 601 KAR 13:090 a formal report must be prepared on each of the hearings held. In addition, several personal letters must be sent to each person with a disability brought under the purview of the Medical Review Board.

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Much more stringent standards were considered and rejected since the Medical Review Board and the Transportation Cabinet have always striven to allow anyone who can do so safely to continue operating a motor vehicle.

(8) Assessment of expected benefits: Safe driving medical standards which are known in advance which will make it easier for families and physicians to know if an individual should be able to safely operate a motor vehicle.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be a positive effect on highway safety throughout Kentucky with the implementation of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be an adverse effect on highway safety.

(c) If detrimental effect would result, explain detrimental effect: Since 601 KAR 13:011 expired on April 15, 1996, without the implementation of this administrative regulation and 601 KAR 13:090 there would be no mechanism in Kentucky to remove drivers with disabilities adversely affecting their ability to safely operate a motor vehicle from the highways.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. (Explain why tiering was or was not used) The administrative regulation provides a tiering of the standards for operating a motor vehicle.

STATEMENT OF EMERGENCY
787 KAR 1:210E

Under KRS Chapter 13A, the administrative body is required to implement this administrative regulation in order to have sufficient authority to establish 1996 contribution rates for Kentucky employers under the Unemployment Insurance Program. These rates are spelled out in 787 KAR 1:210 and per KRS 341.270, and predicated on the Trust Fund Balance as of December 31 of any calendar year. An emergency administrative regulation is needed because this information is necessary in assigning rates for the first quarter of 1996 contribution reports which are due before promulgation of the administrative regulation through the normal process could occur. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. A "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler.

PAUL E. PATTON, Governor
RODNEY S. CAIN, Secretary

WORKFORCE DEVELOPMENT CABINET
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:210E. Employer contribution rates.

RELATES TO: KRS 341.270
STATUTORY AUTHORITY: KRS 151B.020, 341.115
EFFECTIVE: April 8, 1996

NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1995 [~~1994~~] was $470,825,898.93 [~~418,365,150.84~~].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1995 [~~1994~~].

Section 2. Rate Schedule. On the basis of the findings in Section 1, and in accordance with KRS 341.270, Schedule A of Table A shall be in effect for calendar year 1996 [~~1995~~], because the "trust fund balance" equals or exceeds $350,000,000 on December 31, 1995 [~~1994~~]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%

-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than -8.0%	9.00%

TREVA B. WRIGHT-DONNELL, Commissioner
RODNEY S. CAIN, Secretary
APPROVED BY AGENCY: March 28, 1996
FILED WITH LRC: April 8, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner
(1) Type and number of entities affected: 75,626 Kentucky employers.
(2) Direct and indirect cost or savings to those affected:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: None
2. Second and subsequent years: None
(3) Effects on the promulgating administrative body:
(a) Direct and indirect cost or savings: None
1. First year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(4) Assessment of anticipated effect on state and local revenues: Possible increase in UI Trust Fund receipts due only to natural wage increases and increased number of employers.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds (BCAA).
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: None
(b) Kentucky: None
(7) Assessment of alternative methods; reasons why alternatives were rejected: None
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
(b) State whether a detrimental effect on environment and public health would result if not implemented: None
(c) If detrimental effect would result, explain detrimental effect: None
(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(10) Any additional information or comments: None
(11) TIERING: Is tiering applied? No. All taxpaying employers are treated equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects the unemployment tax assessed based on the payroll of those local governments which have elected to make quarterly unemployment tax payments.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: The great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax rate schedule in effect for 1996, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

STATEMENT OF EMERGENCY
904 KAR 3:042E

Administrative regulation 904 KAR 3:041 has expired and this emergency administrative regulation is being promulgated to correct a deficiency that was cited on that administrative regulation, found by the Interim Joint Health and Welfare Committee, by deleting an age factor to the priority status criteria listed in Section 3(2) of this 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 April 15, 1996 filing.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
Department for Transitional Support
Division of Management & Development

904 KAR 3:042E. Food Stamp Employment and Training Program.

RELATES TO: KRS 194.050, 7 CFR 273.7, PL 103-66
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: April 15, 1996
NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Employment and Training (ET) Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp ET Program. Administrative regulation 904 KAR 3:041 has expired and this administrative regulation corrects a deficiency on that administrative regulation that was found by the Interim Joint Commit-

tee on Health and Welfare by deleting an age factor to the priority status criteria listed in Section 3(2) of this administrative regulation.

Section 1. Definitions. (1) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with ET requirements occurred.

(2) "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(3) "Primary wage earner (PWE)" means the household member providing the most earned income in the prior two (2) months.

(4) "Voluntary quit" means the self-termination of employment by a household member on a voluntary basis.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household.

(3) Unless otherwise exempt, persons who are excluded household members of the food stamp case, shall be required to register for work during periods of disqualification. These individuals are:

(a) Ineligible aliens;

(b) Individuals disqualified for refusing to provide or apply for a Social Security number; and

(c) Individuals disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person younger than sixteen (16) years of age or a person sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with any work requirement in the AFDC Program;

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;

(g) A regular participant in a substance abuse or alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, provided that those meeting student status have met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in an Aid to Families with Dependent Children (AFDC) grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a household member who has a physical disability;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person;

(c) Participate in an ET program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) Report to an employer if referred by the ET worker or designee provided that the potential employment is not unsuitable as designated in Section 7 of this administrative regulation; and

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) Household members who are exempt or those completing the work registration requirements may volunteer to participate in the ET program.

(8) The ET worker shall explain to the food stamp applicant:

(a) The work requirements for each nonexempt household member;

(b) The rights and responsibilities of the work registered household members; and

(c) The consequences of failing to comply.

(9) Each household member required to register shall be notified in writing of the requirements in subsection (6) of this section.

Section 3. Employment and Training Participation. (1) Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority status.

(2) Priority status shall be determined if the work registrant:

(a) Has no high school diploma or GED;

(b) Has no employment in the last twelve (12) months; or

(c) Is a veteran.

(3) ET participants shall:

(a) Be placed in education, skills training or job search activities;

(b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:

1. The child care maximum payments as specified in 904 KAR 2:017 not to exceed $200 per month per child under two (2) years of age or $175 per month per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994; and

2. Twenty-five (25) dollars a month for miscellaneous expenses incurred while participating in the ET Program.

(4) Those participants who do not meet the criteria in subsection (2) of this section shall not be selected to participate in an ET component unless they are adamant about participating.

Section 4. Components. All counties offering the Employment and Training Program shall offer the following services and activities:

(1) Educational components shall be:

(a) Literacy programs;

(b) Adult basic education (ABE);
(c) General equivalency diploma (GED); and
(d) Community college.
(2) Skills training components shall be:
(a) Vocational school;
(b) On-the-job training; and
(c) Kentucky Domestic Violence Association (KDVA).
(3) Job search components shall be:
(a) Job seeking skills training;
(b) Group job search; and
(c) Individual job search.

Section 5. Conciliation. (1) When an ET participant fails to comply with ET Program requirements, a conciliation period shall be initiated.
(2) Conciliation shall be used to:
(a) Determine the reason for the noncompliance; and
(b) Allow the participant the opportunity to resolve the problem in order to continue participation.
(3) Conciliation lasts for fifteen (15) days and in that time the ET worker shall:
(a) Determine good cause for noncompliance; or
(b) Encourage the participant to resume ET activity; or
(c) Recommend disqualification for failure to comply with program requirements.
(4) If the participant resumes ET activity, no further action is required toward applying a sanction.
(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where the work registrant has failed to comply with:
(a) Work registration requirements as specified in Section 1 of this administrative regulation;
(b) Employment and training requirements as specified in Section 3 of this administrative regulation; or
(c) Voluntary quit requirements as specified in Section 9 of this administrative regulation.
(2) Good cause for failing to meet work registration and employment and training requirements shall include circumstances beyond the control of the registrant including:
(a) Illness;
(b) Illness of another household member requiring the presence of the registrant;
(c) A household emergency;
(d) Unavailability of transportation; and
(e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Sanctions in the ET Program. (1) Disqualifications shall be imposed as follows:
(a) If the nonprimary wage earner (non-PWE) fails to comply with ET, the individual shall be ineligible to receive food stamp benefits for two (2) months;
(b) If the primary wage earner (PWE) fails to comply with ET requirements, the entire household shall be ineligible to receive food stamp benefits for two (2) months.
(2) If a disqualification is imposed, the disqualified member shall make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance.
(3) Ineligibility as outlined in subsections (1) and (2) of this section continues until the ineligible member:
(a) Leaves the household;
(b) Becomes exempt from work registration;
(c) Complies with the work registration requirements; or
(d) The two (2) month disqualification period expires, whichever occurs first.
(4) If an ineligible household member joins a new household and:
(a) Is the primary wage earner, the entire new household then becomes ineligible for the remainder of the disqualification period; or
(b) Is not the primary wage earner, only he remains ineligible for the remainder of the disqualification period.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:
(1) The wage offered is less than the highest of the following:
(a) The applicable federal minimum wage;
(b) The applicable state minimum wage; or
(c) Eighty (80) percent of the federal minimum wage if neither the federal nor state minimum wage is applicable.
(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.
(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.
(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.
(5) In addition, employment shall be considered unsuitable if the household member involved can demonstrate or the worker otherwise becomes aware that:
(a) The degree of risk to health and safety is unreasonable;
(b) The member is physically or mentally unsuited to perform the employment. This shall be documented by medical evidence or by reliable information from other sources;
(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience as demonstrated by the individual or if the worker otherwise becomes aware;
(d) Daily commuting time exceeds two (2) hours a day, not including transporting a child to and from a child care facility;
(e) The distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site; or
(f) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs.

Section 9. Voluntary Quit. (1) A primary wage earner who voluntarily quits a job of twenty (20) hours or more a week without good cause sixty (60) days or less prior to the date of food stamp application shall not be eligible to participate in the program.
(2) The disqualification period for voluntary quit shall be:
(a) Ninety (90) days from the date of quit if the individual is an applicant; and
(b) Ninety (90) days beginning with the first of the month after all normal procedures for taking adverse action have been taken if the individual is in an active food stamp case.
(3) Good cause for leaving employment includes criteria in Section 5 of this administrative regulation and the following:
(a) Discrimination by the employer based on:
1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;
(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;

(c) Acceptance of employment by the head of household, or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the head of household to leave employment;

(e) Resignations of persons under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 of this administrative regulation after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment of more than twenty (20) hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than twenty (20) hours a week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours; and

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit shall be verified if questionable.

Section 10. Curing Sanction for Voluntary Quit. (1) A household may begin participation in the Food Stamp Program following the voluntary quit disqualification period if it applies again and is determined eligible.

(2) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be allowed to resume participation if the member who caused the disqualification:

(a) Secures new employment which is comparable in salary or hours to the job which was quit; or

(b) Leaves the household.

(3) A work registrant who:

(a) Is required to participate in the:

1. Food Stamp Employment and Training Program; or

2. Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) Program as specified in 904 KAR 2:006 and 904 KAR 2:370; and

(b) Fails to participate shall be ineligible to receive food stamp benefits for two (2) months unless:

1. Good cause exists;

2. The noncompliant individual was participating in a JOBS component which is more stringent than the components of the ET Program; or

3. The noncompliant JOBS participant is otherwise exempt from work registration in the ET Program.

(c) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the ET Program unless otherwise exempt by subsection (2) of this section.

Section 11. Hearing Process. Work registrants shall have the same opportunity to request a hearing as specified in 904 KAR 3:070.

Section 12. Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.

Section 13. Material Incorporated by Reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated effective January 1, 1994. These forms include:

(a) ET-101, revised 7/93;
(b) ET-102, revised 8/93;
(c) ET-102 Supplement A, revised 12/91;
(d) J/ET-108, revised 9/91;
(e) ET-111, revised 7/93;
(f) ET-112, revised 10/90;
(g) ET-114, revised 12/91;
(h) ET-116, revised 12/93.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: April 1, 1996
FILED WITH LRC: April 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: There is no way for the agency to determine how many entities will be affected by removing the age limit from the priority status criteria. When the age limit was put into place there was a slight decrease in the number of individuals served by the Food Stamp Employment and Training Program. It was originally anticipated that a decrease of approximately 50% would occur but we have not seen that large of a decrease. As a result by removing the age limit, we do not anticipate a significant increase.

(2) Direct and indirect cost or savings to those affected: This amendment should have not direct cost or savings to those affected.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent is published.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent is published.

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

1. First year following implementation: This amendment will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: The removal of age limits on the priority status criteria should result in a slight increase in the number of individuals served by the Food Stamp Employment and Training Program.

(a) Direct and indirect cost or savings: This amendment should have a minimal fiscal impact to the agency in that by removing the age factor there will be some additional individuals who meet the priority status criteria. Additional funding will not be required to make the change in this amendment.

1. First year: See direct and indirect cost or savings

2. Continuing cost or savings: Same as item #1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment will not result in any additional reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal dollars for administration based on allotted amount awarded to states. Any additional administrative dollars are paid with 50% / 50% matching dollars. Benefits are paid at a 50% / 50% match.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after Notice of Intent is published.

(b) Kentucky: To be determined after Notice of Intent is published.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods pursued. This regulation corrects a deficiency cited by the Interim Joint Committee on Health and Welfare.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation corrects a deficiency cited by the Interim Joint Committee on Health and Welfare who were concerned that adding the age limit to the priority status would prevent some individuals from participating in the Employment and Training Program.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Apparently some committee members believe that adding the age limits could be considered discriminatory for individuals over the age of thirty. As a result, we are removing the age limit to prevent such a detrimental effect from occurring.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect is expected.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No, federal statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The age limit that is being deleted is a state option. There is no federal mandate that requires the limit to either be applied or not be applied.

2. State compliance standards. There is no state requirement for an age limit to be applied.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? It does not affect local government or any service it provides.

STATEMENT OF EMERGENCY
907 KAR 1:140E

This emergency administrative regulation is being amended to revise the program component of alternative intermediate services for individuals with mental retardation or developmental disabilities by providing for a process under which the necessity for continuation of services will be determined and by establishing an AIS-MR waiting list and due process procedures for eligible clients. This action must be taken on an emergency basis to ensure equal access to AIS-MR services. It will also protect clients through due process procedures that continue to provide for continued payment for services during the appeals process. Enactment of this administrative regulation on an emergency basis would serve to protect the public health, safety or welfare of Medicaid beneficiaries. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on September 27, 1995 as follows: The AIS-MR waiting list process is contained within the body of this administrative regulation and not just incorporated by reference in the manual. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON C. JONES, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

907 KAR 1:140E. Alternative intermediate [~~home and community based~~] services for individuals with mental retardation or developmental disabilities. [~~the mentally retarded (AIS/MR).~~]

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subpart G, 42 USC 1396a, b, d, n, EO 95-79

EFFECTIVE: April 4, 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~~]. EO 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 [~~coverage~~] provisions relating [~~applicable~~] to home and community based services provided to individuals with mental retardation or developmental disabilities [~~the mentally retarded~~] as an alternative to intermediate care facility services for the mentally retarded for which payment shall be made by the Medicaid Program on behalf of both categorically needy and the medically needy beneficiaries.

Section 1. Definitions. (1) "AIS-MR services" means alternative intermediate services for individuals with mental retardation or developmental disabilities.

(2) "Department" means Department for Medicaid Services.

(3) "Financially feasible for the department" means the AIS-MR services do not cost significantly more than would institutional services.

(4) "Survey agency" means an agent designated by the department to survey and certify facilities to provide AIS-MR services to eligible recipients.

Section 2. [~~1.~~] General Medicaid Coverage Provisions. (1) The home and community based services described in this administrative

regulation shall be provided only to those individuals eligible for Medicaid who meet intermediate care for the mentally retarded patient status criteria as set forth in 907 KAR 1:022.

(2) These services are designed to prevent or reduce institutionalization at the intermediate care level and shall [~~therefore~~] be provided only to individuals with mental retardation or developmental disabilities in community residence living situations. [~~These services are termed alternative intermediate services for the mentally retarded (AIS/MR).~~]

Section 3. [~~2.~~] Provider Participation. (1) Any qualified provider may provide AIS-MR services, upon application to the department [~~cabinet~~] for a provider participation agreement accompanied by data sufficient in the opinion of the department [~~cabinet~~] to show that the provider is qualified [~~under applicable law~~] to provide the services pursuant to the AIS-MR manual. [~~and has the capability to do so.~~]

(2) Providers certified by the cabinet shall be considered qualified to enter into a Medicaid Program [~~the appropriate AIS/MR~~] provider participation agreement. Certification shall be determined by a surveying agency as [~~the Division of Licensing and Regulation, Office of the Inspector General, or other agency~~] designated by the department [~~for Medicaid Services~~] in accordance with the qualifications in Section 4 [~~3~~] of this administrative regulation.

(3) Participating providers shall be required to provide, or arrange for the provision of, services appropriate to their certification described in this administrative regulation.

Section 4. Certified [~~3.~~] Providers [~~Certification~~]. (1) Providers shall be certified to provide Medicaid services after the completion of a survey by the survey agency, if the provider has been found to be in substantial compliance with the provider qualification requirements shown in the AIS-MR Manual, as follows:

(a) Case management;
(b) In-home training;
(c) Homemaker and home health aide;
(d) Personal care;
(e) Residential care;
(f) Habilitation;
(g) Day habilitation;
(h) Respite care; and
(i) Multiservice providers. [~~after survey by the certification agency if the provider has been found to be in major compliance with the provider qualification requirements shown in the AIS/MR provider qualifications manual, dated November 1, 1991, herein incorporated by reference.~~]

(2) Providers requesting certification under this administrative regulation shall be considered certified through the date of their first survey to provide any services which were provided by that agency, [~~during the period from September 1, 1991 through the effective date of this administrative regulation~~] if those services were provided by or through contract with a participating provider. [~~The AIS/MR provider qualifications manual shall be on file in the Commissioner's Office, Department for Medicaid Services, Third Floor East, CHR Building, 275 East Main Street, Frankfort, Kentucky 40601 and will be available for review on normal working days (Monday through Friday) from 8 a.m. through 4:30 p.m. Copies may be obtained from that office upon payment of an appropriate fee which approximates cost.~~]

Section 5. Medicaid [~~4.~~] Covered Services. Except for room and board, the following services shall be covered as AIS-MR services:

(1) Residential care services to include: [~~provision of training, homemaker and home health aide support, and personal care. Room and board shall be excluded.~~]

(a) Client ["]training["] including [~~which includes~~] services designed to facilitate the acquisition of communication, sensory-motor, independent living, and social skills.

(b) Homemaker and home health aide support including [~~which includes~~] the provision of laundry services, meal planning and preparation, shopping and light housekeeping.

(c) ["]Personal care["] including [~~which includes~~] services to assist and train in ambulation, grooming, feeding, and other related skills. [~~etc.~~]

(2) Case management services, including [~~which includes~~] the following:

(a) Provision of intake;
(b) Evaluation or assessment;
(c) Access to and assuring freedom of choice of AIS-MR providers [~~of AIS/MR~~];
(d) Plan-of-care development and coordination;
(e) Monitoring and support;
(f) Operation of the core residence;
(g) Assuring the availability of needed waiver services;
(h) Meeting with and providing information to clients, parents or legal representatives;
(i) Establishing and overseeing a human rights committee for review of overall procedures and individual behavioral plans; and
(j) Acting on behalf of the client to assist [~~him~~] in gaining access to and receiving services from qualified AIS-MR service providers;
(k) Providing assistance to [~~In addition to the above, the case management provider shall assist~~] the client, his family or legal representatives in accessing other services, as needed;
(l) [~~The case management provider shall be responsible for~~] Monitoring the health, safety and welfare of the client, including assuring that [~~.~~] each core residence stay shall be limited to no more than ninety (90) days per client [~~patient~~].

(3) ["]In-home training["] including [~~which includes~~] services designed to facilitate the acquisition, retention and improvement of language and communication, sensory-motor, social and self-help skills.

(4) ["]Homemaker and home health aide support["] including [~~which includes~~] services to clients in their [~~own family~~] homes including the provision of laundry services, meal planning and preparation, shopping and house cleaning.

(5) ["]Personal care["] including [~~which includes~~] services to assist and train in ambulation, dressing, grooming, eating, toileting, and other related skills. [~~etc.~~]

(6) Habilitation services including [~~which includes~~] behavior management services, psychological services, minor home physical adaptations [~~(including in home and alternate living units other than group homes)~~], medical services, occupational therapy, physical therapy, speech therapy, expressive therapies and leisure and recreation therapy. Services required to be provided by other agencies under the 29 USC Section 701 and 20 USC Section 1400 shall not be covered by the Medicaid Program. [~~Services shall be available to both adults and children if not required to be provided by the local schools and if directed at the resolution of problems not associated with mental illness.~~]

(7) Day habilitation services shall be provided for:

(a) A minimum of four (4) hours per day, five (5) days per week, twelve (12) months per year, in nonresidential noninpatient settings.

(b) Services shall be age appropriate.

1. Adult means an individual [~~not less than~~] eighteen (18) years of age or older.

2. For children, day habilitation services shall be covered only during the summer months when school is not in session.

(c) Day habilitation services may include supported employment and prevocational training for eligible persons, including [~~i.e.,~~] those participating individuals who have been deinstitutionalized.

(8) Respite care including [~~which includes~~] short-term care and supervision of the AIS-MR client provided for the temporary relief of the family or staff, or for the safety or relief of the client. Except for those clients residing in group homes or staff residences, coverage shall be limited to a maximum of sixty (60) days per calendar year for clients [~~(excluding those residing in group homes or staff residences),~~]

with no more than thirty (30) consecutive days of respite.

Section 6. Client [~~5. Patient~~] Status Determinations. The department [~~cabinet~~] shall make client [~~patient~~] status determinations using the criteria specified under patient status determinations pursuant to [~~in~~] 907 KAR 1:022.

Section 7. [~~6.~~] Authorization for Services[~~; Hearing Rights~~]. (1) The department [~~cabinet~~] shall authorize AIS-MR services:

(a) To insure that client [~~patient~~] status is met in accordance with Section 6 of this administrative regulation;

(b) That [~~AIS-MR services~~] are adequate for the needs of the client; and

(c) That [~~AIS/MR services~~] are financially feasible for the department to provide [~~(i.e., do not cost significantly more than would institutional services)~~].

(2) A client found unsuitable due to failure to meet any of the specified reasons shall be denied AIS-MR] services.

(3) An individual, if eligible for AIS-MR services, shall be given the choice of AIS-MR services or traditional intermediate care facility services for the mentally retarded.

Section 8. AIS-MR Waiting List. Using procedures described in the Medicaid Alternative Intermediate Service-Mental Retardation Manual clients may be placed on a waiting list maintained by the department. The main components of the AIS-MR waiting list process are as follows:

(1) Application. The case management provider is responsible for getting the client on the AIS-MR waiting list by completing a MAP-620, Application to AIS-MR Services.

(2) AIS-MR waiting list placement.

(a) The order of placement on the AIS-MR waiting list shall be determined chronologically by date of receipt of the MAP-620 by the Department for Medicaid Services, unless an emergency situation which meets specified criteria supersedes the chronological order. Emergency criteria shall be defined as:

1. Death or loss of the immediate care provider.

2. Emergency hospitalization of the immediate care provider.

3. Other circumstances which relate to client's or caregiver's situation may also be considered as emergency criteria on a case-by-case basis.

(b) If multiple MAP-620 forms are received on the same arrival date, a lottery shall be held to determine placement on the AIS-MR waiting list.

(c) A written notification of the date and placement on the AIS-MR waiting list shall be mailed to the client or his legal representative and case management provider within ten (10) days of receipt of the MAP-620 by the department.

(3) Maintenance of the AIS-MR waiting list. The department shall, at least annually, update the AIS-MR waiting list. The client or his legal representative and the case management provider shall be contacted in writing to verify the accuracy of the data on the AIS-MR waiting list and the continued desire to pursue placement in the AIS-MR Program. The requested data shall be received by the department within ten (10) days from the date of the letter, excluding holidays and weekends.

(4) Criteria for removal from the AIS-MR waiting list. The removal from the waiting list shall not preclude the resubmittal of a new MAP-620 at a later date for the client.

(a) The criteria for removal from the waiting list shall be:

1. After a documented attempt, unable to locate the client or his legal representative.

2. If the AIS-MR placement for services is offered and the client or his legal representative refuses the offer of placement or does not complete the application process with the Department for Medicaid Services within sixty (60) days of the placement allocation date, without good cause.

3. Client is deceased.

(b) Written notification shall be mailed to the client or his legal representative and the case manager if the client is removed from the AIS-MR waiting list.

Section 9. Appeal Rights. (1) Negative actions regarding Medicaid beneficiaries [~~Any denial of service,~~] may be appealed in accordance with 907 KAR 1:560. [~~the manner provided for by 907 KAR 1:075 or 904 KAR 2:055 as appropriate.~~]

(2) No decision to involuntarily terminate or to reallocate placement subject to appeal shall be final until the hearing officer issues a decision.

Section 10. [~~7.~~] Auditing and Reporting. (1) All participating providers shall be required to maintain fiscal and service records and to provide reports determined necessary by the department [~~cabinet~~] for the effective functioning and administration of the program.

(2) Providers shall be required to make available upon request all service and financial records to representatives or designees of:

(a) The Commonwealth of Kentucky, Cabinet for Health Services [~~Human Resources~~];

(b) The United States [~~federal~~] Department of Health and Human Services, Comptroller General;

(c) The Department of Health and Human Services, [~~and~~] Health Care Financing Administration; [~~and~~]

(d) The General Accounting Office; and

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts. [~~, and their designees, for auditing and monitoring purposes.~~]

Section 11. Material Incorporated by Reference. (1) The Medicaid Alternative Intermediate Service-Mental Retardation (AIS-MR) Manual, dated March 1, 1996 is 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 is 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 8. The amendments to this administrative regulation shall apply to certification of providers on November 1, 1991 and with regard to services provided on or after January 1, 1992.~~]

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: March 26, 1996
FILED WITH LRC: April 4, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All potential recipients of the Medicaid Program for alternative intermediate services for individuals with mental retardation or developmental disabilities and participating service providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Budget neutral.

2. Continuing costs or savings: Budget neutral.

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 provide for greater access to health care services for Medicaid recipients.

(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: Could lead to reduced access to health care services for Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY
907 KAR 3:005E

This emergency administrative regulation is being promulgated to replace the administrative regulation 907 KAR 1:009, Physicians' services, which was found deficient and will sunset upon adjournment of the General Assembly. This administrative regulation is not the same as the administrative regulation found deficient and is substantially different since it no longer contains the provision(s) found deficient. The incorporated by reference Physician Manual has been revised to correspond with the companion administrative regulation 907 KAR 3:010, Reimbursement for physicians' services, and unnecessary material has been removed. This action must be taken on an emergency basis to ensure that medically necessary physicians' services are available for Medicaid eligible recipients. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on September 19, 1995. This administrative regulation is not the same as the administrative regulation found deficient and is substantially different since it no longer contains the provision(s) found deficient. The incorporated by reference Physician Manual has been revised to correspond with the companion administrative regulation 907 KAR 3:010, Reimbursement for physicians' services, and unnecessary material has been removed. 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 3:005E. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, EO 95-79

EFFECTIVE: April 15, 1996

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, reorganized 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 physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy. This administrative regulation is not the same as the administrative regulation 907 KAR 1:009 found deficient and is substantially different since it no longer contains the provision(s) found deficient.

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

elsewhere.

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

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

Section 2. Physicians Manual. (1) The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. The Physician Manual, revised December 1995, 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, 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 time), excluding state holidays.

(4) Copies may be obtained from the Department for Medicaid upon payment of an appropriate fee in accordance with KRS 61.872.

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

(2) Laboratory procedures.

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

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

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

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

(5) Services performed or recipient contacts made exclusively by physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after April 15, 1996.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: April 4, 1996
FILED WITH LRC: April 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore (564-5020)

(1) Type and number of entities affected: All physicians participating in the Medicaid Program.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A 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: *Cost impact reflected in the companion regulation 907 KAR 3:010E.

2. Continuing costs or savings: *Cost impact reflected in the companion regulation 907 KAR 3:010E.

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: To ensure that medically necessary physicians' services are available for Medicaid eligible recipients.

(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 recipients because medically necessary physicians' services may not be available.

(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 the companion regulation to 907 KAR 3:010E.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY
907 KAR 3:010E

This emergency administrative regulation is being promulgated to replace the administrative regulation 907 KAR 1:010, Payments for physicians' services, which was found deficient and will sunset upon adjournment of the General Assembly. This administrative regulation is not the same as the administrative regulation found deficient and is substantially different since it no longer contains the provision(s) found deficient. The resource based relative value scale conversion factors have been increased effective July 1, 1996. This action must be taken on an emergency basis to ensure that medically necessary physicians' services are available for Medicaid eligible recipients. 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 September 19, 1995. This administrative regulation is not the same as the administrative regulation found deficient and is substantially different since it no longer contains the provision(s) found deficient. The resource based relative value scale conversion factors have been increased effective July 1, 1996. 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
APPROVED BY AGENCY: April 4, 1996
FILED WITH LRC: April 15, 1996 at 9 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

907 KAR 3:010E. Reimbursement for physicians' services.

RELATES TO: KRS 205.550
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 447 Subpart B, 42 USC 1396a-d, 1396s, EO 95-79
EFFECTIVE: April 15, 1996
NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, reorganized the Cabinet for Human Resources and placed 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 establishing reimbursements for physicians' services. This administrative regulation is not the same as the administrative regulation 907 KAR 1:010 found deficient and is substantially different since it no longer contains the provisions found deficient.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

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

(3) "Usual and customary charge" means as defined in 907 KAR 1:002.

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

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

(a) The dollar conversion factors effective for the period ending June 30, 1996 shall be as follows:

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

(b) The dollar conversion factors effective for the period beginning on July 1, 1996 shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except delivery-related)	$ 29.02
All Other Services	$ 29.67

Section 3. Reimbursement Exceptions. The following covered services which are reimbursement exceptions are shown in the Physicians Manual which is incorporated by reference in 907 KAR 3:005.

(1) Physicians shall be allowed to secure drugs for specified immunizations identified in 907 KAR 3:005 as follows:

(a) Free through the Vaccines for Children Program in accordance with the terms, standards, and criteria described in 42 USC 1396(a)(62) and 1396s; or

(b) In the open market. The Department for Medicaid Services shall reimburse the physician the same amount that the Department for Public Health would pay to obtain that drug.

(2) Payments for specified obstetrical services, shall be reimbursed the lesser of the actual billed charge or at the standard fixed fee paid by type of procedure. The obstetrical services and fixed fees shall be: Vaginal delivery only, $870; Vaginal delivery including postpartum care, $900; Cesarean delivery only, $870; and Cesarean delivery including postpartum care, $900.

(3) For delivery-related anesthesia services, a physician shall be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees shall be: Vaginal delivery, $200; Epidural single, $315; Epidural

continuous, $335; and Cesarean section, $320.

(4) Payment for individuals eligible for coverage under Medicare Part B is made in accordance with the individual's Medicare deductible and coinsurance liability.

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

(6) Physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

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

(8) Payments for the injection procedure for chemonucleolysis of intervertebral disk(s), lumbar shall be the lesser of the actual billed charge or at a fixed upper limit of $793.50 as established by the department.

(9) Certain injectable antibiotics and antineoplastics, and contraceptives shall be reimbursed at the lesser of the actual billed charge or at the average wholesale price of the medication supply minus ten (10) percent.

(10) Specified family planning procedures performed in the physician office setting shall be reimbursed at the lesser of the actual billed charge or the established RBRVS fee plus actual cost of the supply minus ten (10) percent.

Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after April 15, 1996 except as otherwise specified.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: April 4, 1996
FILED WITH LRC: April 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore (564-5020)

(1) Type and number of entities affected: All physicians participating in the Medicaid Program.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A 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: $26 million (Cost)
2. Continuing costs or savings: $26 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: To ensure that medically necessary physicians' services are available for Medicaid eligible recipients.

(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 because medically necessary physicians' services may not be available.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY AND THE REVIEWING LEGISLATIVE SUBCOMMITTEE

COUNCIL ON HIGHER EDUCATION
(As Amended)

13 KAR 2:045. Determination of residency status [~~Classification of residency~~] for admission and tuition assessment purposes.

RELATES TO: KRS 164.020, **164.030** [~~, 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) "**Continuous** [~~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 **unless** [~~,~~] a [~~The~~] sequence of continuous enrollment is broken **where** [~~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 **and** [~~. 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)**(a)** [~~(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" **means** [~~refer to~~] all **entities** [~~institutions~~][~~, public or private,~~] offering instruction and conferring degrees or diplomas beyond the secondary school level, **including** [~~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" **means** [~~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 **but** [. 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.

(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 **including** [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 individual seeking a determination of residency status must demonstrate that status by clear and convincing evidence.**

(d) 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.

(e) [(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)** 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).]

(b) [(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.

(3)(a) [(b)] 1. A [(5) Any] dependent person whose parent or parents are domiciled in and **whose parents** [who] are residents of [(c), having domicile in] this state, and **whose parents** [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.

(b) [(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.

(c) [(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[,] or dependent children, notwithstanding the provisions of paragraph (d) of this subsection [[Section 2(2)(c) of this administrative regulation].

(d) [(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.]

(e) [(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.

(f) [(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]

(g) [(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.]

(h) [(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.

(i) [(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.

(j) [~~(k)~~]1. [~~(12)~~] 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.

[~~(13) 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.

(k) [~~(l)~~]1. A [~~(14) 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 [~~3(1)~~] prior to obtaining permanent status may be considered in establishing Kentucky domicile and residency.

(l) [~~(m)~~] A [~~(15) 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.~~]

(m) [~~(n)~~]1. A [~~(16) 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.

(n) [~~(o)~~] [~~(17)~~] 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. [~~(c)~~] The beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution.

[~~(18) 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.~~]

(o) [~~(p)~~] Kentucky residency status [~~(19) 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.

(4) [~~(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(5) 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 **unless that** [~~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 institution;~~]

3. [~~(c)~~] 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.

(5) [~~(4)~~](a) A [~~(5) 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 **because of incorrect information** [~~, 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 **a person or office at the institution with** [~~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(s) 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. (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 **set out** [~~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[~~s~~] 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 **apply to** [~~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**, by registered or certified mail** 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. [~~'s 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 [~~(c) based upon~~] this administrative regulation [~~for said determinations~~].

(9) [~~If~~] 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 **institutional determinations of residency status** [~~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 6 [~~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.

(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 **but a remand shall halt the twenty-one (21) day requirement.** [~~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 **by registered or certified mail** 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) **days** 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. **Charges for Conduct of Administrative Hearings.** 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

GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Architects
(As Amended)

201 KAR 19:035. Qualifications for examination.

RELATES TO: KRS 323.050**(2), (3)**, 323.060
STATUTORY AUTHORITY: KRS 323.210**(1)(b), (2)**
NECESSITY AND FUNCTION: **KRS 323.210(1)(b) and (2) require the board to promulgate administrative regulations governing the contents and conduct of examinations. This administrative regulation prescribes conditions for applicants for examination.** [~~To further define eligibility of applicants for admission to the examinations.~~]

Section 1. Eligibility to Take the State Board Examination. **A** [~~Any~~] person who possesses the qualifications prescribed in KRS 323.050, and **this administrative regulation** [~~as further defined in other sections of these administrative regulations~~], shall be eligible to take the examinations.

Section 2. **(1)(a) The board shall verify the good moral character of an applicant for examination with employers and registered architects who have knowledge of his moral character.**

(b) An applicant shall not be considered to be of good moral character if he has:

1. Committed an act specified in KRS 323.120(1)(a) through (e);

2. Chronic alcoholism, persistent drug abuse, or any such acts of behavior that would, if the applicant were licensed, jeopardize or impair his judgment to meet professional responsibility as an architect to the public welfare and safety;

3. Violated any provision of KRS Chapter 323 or board administrative regulations either before or after admission to the examination; or

4. Violated the registration law of any other state, territory, or country.

(2) To be eligible for examination, an applicant shall present college transcripts and verification from employers and architects that he has:

(a) Met all the requirements of KRS Chapter 323 and this administrative regulation; and

(b) Has had well diversified and satisfactory training in architectural practice.

(3) The documentation required by subsection (2) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards. [~~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 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 **as determined** by the experience and education definitions of Table A and the footnotes thereto.

(2) 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 **as provided by** [~~in accordance with~~] Appendix B and **applicable provisions** [~~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. **(1) The following material is incorporated by reference:**

(a) "Circular of Information No. 1", (1995-1996 Edition), National Council of Architectural Registration Boards; and

(b) "Circular of Information No. 3", (1995-1996 Edition), National Council of Architectural Registration Boards.

(2) This material may be inspected, copied, or obtained at State board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, Monday through Friday, 9 a.m. to 5 p.m. [~~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, [3302 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.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended)

201 KAR 30:040. Standards of practice administrative regulation.

RELATES TO: KRS 324A.035, 324A.050(10)**, 12 USC 3331, 3336, 3339**

STATUTORY AUTHORITY: KRS 324A.035**, 12 USC 3331, 3336, 3339**

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, 3336, and 3339 and 12 CFR 225.64 and 225.65** [~~3331-3351~~], require[~~s~~] 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 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 [~~1995~~] 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.

KENTUCKY LOTTERY CORPORATION
(As Amended)

202 KAR 3:020. Procurement procedures.

RELATES TO: KRS 154A.060(2)(a), 154A.120
STATUTORY AUTHORITY: KRS 154A.050(1)(d)9, 154A.120[~~(1)~~]
NECESSITY AND FUNCTION: Pursuant to KRS 154A.120(1), the Kentucky Lottery Corporation is authorized to **promulgate** [~~adopt~~] administrative regulations establishing its procurement procedures. **KRS 154A.120(1) provides** [~~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. Incorporation by Reference. (1) "Kentucky Lottery corporation Procurement Procedures, January 26, 1996" is incorporated by reference.

(2) This material may be inspected, copied, or obtained from the Director of Purchasing at the offices of the Kentucky Lottery Corporation, Two Paragon Centre, Suite 400, 6040 Dutchmans Lane, Louisville, Kentucky 40205-3271, Monday through Friday, 8 a.m. to 5 p.m. [~~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.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 1:016. Use of public lands and waters at department-owned lakes. [**~~Private camps; boat docks, etc.~~**]

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625, 150.640
STATUTORY AUTHORITY: KRS [~~13A.350,~~] 150.025
NECESSITY AND FUNCTION: This administrative regulation governs [~~sets forth the conditions that govern the construction of~~] private boat docks on department-owned waters, [~~. It provides for~~] the use of lake water for domestic purposes and [~~sets forth the~~] permitted and prohibited activities on department-owned and controlled land surrounding department-owned waters. [~~It is necessary so that the department may have control over the activities on its lands and waters.~~] This amendment is necessary to place a term of five (5) years on boat dock permits, specify procedures for applying for and cancelling boat dock permits, limit dock size, delete the limits on the number of boats permanently moored at docks, and bring the wording and formatting requirements into compliance with KRS Chapter 13A. [~~allow mowing and cutting on departmental lands.~~]

Section 1. Definitions. **(1)** [~~(2)~~] "Adjacent property owner" means the owner of real property that shares a common boundary with department property.

(2) [~~(3)~~] "Boat dock" means a privately owned floating or fixed structure in a lake owned, leased or otherwise controlled by the department.

(3) [~~(1)~~] "Department property" means lands owned, leased or otherwise controlled by the department, and surrounding public fishing lakes.

(4) "Enclosed superstructure" means a roofed structure with solid, glass, screen or similar walls, but does not include dock boxes and similar storage containers less than four (4) feet high.

(5) "Normal pool" means a water level equal to the elevation of the lake's principal spillway. [~~Each owner or lessee of any private camp which is established on property immediately adjacent to any department owned lake may, upon written consent of the Department of Fish and Wildlife Resources, construct and place in the waters of the lake one (1) boat dock (one (1) dock for each individual or separate real lot). Each boat dock placed in the waters of the lake must conform to the following specifications:~~

~~(1) Float or dock must measure no larger than fourteen (14) feet in length and six (6) feet in width.~~

~~(2) No enclosed superstructure may be built upon any float or dock.~~

~~(3) A canopy constructed of wood, metal or fiberglass is permitted.~~

~~(4) Any superstructure built or placed upon any float or dock must have prior approval of the Department of Fish and Wildlife Resources.~~]

Section 2. Boat Dock Permits. (1) Adjacent property owners may construct boat docks on department property if their property:

(a) Shares at least a fifty (50) foot boundary with department property; and

(b) Is located at one (1) of the following lakes: Beaver, Boltz, Bullock Pen, Carpenter, Elmer Davis, Guist Creek, Kincaid, Kingfisher, or Malone.

(2) Boat dock permits:

(a) Shall cost twenty-five (25) dollars.

(b) Shall be valid for the year of issue and five (5) additional calendar years.

(c) Shall entitle the holder to construct one (1) boat dock meeting the specifications described in Section 4 of this administrative regulation.

(d) May be renewed by:

1. Paying the appropriate fee; and

2. Submitting an affidavit that unauthorized additions or modifications have not been made to the dock or walkway.

(3) A person who owns multiple contiguous properties adjacent to department property:

(a) Shall not be issued more boat dock permits than the number of dwellings on those properties.

(b) Shall be entitled to one (1) boat dock permit if there are no dwellings on his contiguous properties.

(4) Existing boat dock permits shall expire on **June 30** [~~December 31~~], 1996.

(5) Holders of existing boat dock permits shall:

(a) Reapply **after July 1** [~~before December 31~~], 1996; and

(b) Bring their docks into compliance with the specifications of this administrative regulation, except that docks built before the effective

date of this administrative regulation may:

1. Exceed the single dimension limit specified in Section 4 of this administrative regulation by two (2) feet; or

2. Exceed the square footage limit specified in Section 4 of this administrative regulation by thirty-two (32) square feet.

Section 3. Constructing Boat Docks. (1) Persons wishing to construct a boat dock shall:

(a) Submit a boat dock application on forms provided by the department, accompanied by:

1. The permit fee; and

2. Proof that the applicant's property is adjacent to department lands.

(b) Not begin construction until they are issued a construction permit from the department. This permit shall be in addition to other required building permits.

(c) Inform the department when:

1. Construction of new docks is complete; or

2. Existing docks have been brought into compliance.

(d) Allow inspection of the dock by department employees.

(2) The department shall issue a boat dock permit and tag to boat dock owners whose docks successfully complete a final inspection for compliance with the provisions of this administrative regulation.

(3) The dock owner shall affix the tag issued with the permit to the edge of the dock facing the lake.

(4) The Boat Dock Application Form **(1996)** is incorporated by reference. It may be inspected and copied at the Division of Fisheries, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3596, between 8 a.m. and 4:30 p.m. Eastern Time on business days.

Section 4. Boat Dock and Walkway Specifications. (1) Persons shall not construct boat docks that:

(a) Measure more than sixteen (16) feet in any dimension;

(b) Have a surface area of more than 128 square feet.

(c) Have enclosed superstructures;

(d) Have unenclosed superstructures or other features not specified in the boat dock permit.

(e) [~~(5) The~~] Use [~~of~~] metal drums or other [~~as~~] flotation devises [~~is prohibited as well as any flotation devise~~] that will sink when punctured. [~~At such time when the docks currently using metal drums for flotation are in need of replacement, as provided in subsection six (6) of this section, these drums shall be replaced with acceptable flotation devices.~~

~~(6) Boat docks must be kept in a state of good repair. If the owner of the dock fails to keep his dock in good repair, he will be notified by the department in writing to place the dock in a proper state of maintenance as to safety and appearance. If, within sixty (60) days of written notification, substantial work toward repair of the boat dock has not been accomplished, the department shall revoke the owner's boat dock permit and the dock shall be removed from the lake by the owner.~~

~~Section 2. Only one (1) boat may be tied or moored to an individual float or dock located on a state owned lake on a permanent basis. More than one (1) boat may be tied or moored to an individual float or dock for a period of time not in excess if twenty four (24) hours.~~]

(2) Walkways connecting the bank and the dock:

(a) Shall be perpendicular to the shoreline.

(b) Shall be anchored to department property at the shoreline using either:

1. A concrete pad no larger than ten (10) square feet; or

2. Two (2) metal posts at each side of the walkway.

(c) Shall not be wider than four (4) feet.

(d) Shall be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or

2. Twenty (20) feet in length.

(e) Shall not be used for boat mooring.

Section 5. Revocation of Permits. (1) The department may cancel a boat dock permit if the permit holder:

(a) Makes additions or modifications to the dock or walkway without written permission from the department; or

(b) Fails to:

1. Renew the boat dock permit within sixty (60) days of expiration; or

2. Maintain the dock or walkway in a structurally sound condition.

(2) After notification in writing by the department that a permit has been canceled, a person shall remove from department property within sixty (60) days:

1. The dock;

2. The walkway; and

3. The structures used to anchor the walkway.

Section 6. Use of Water. (1) Adjacent property owners shall not [~~3. Each owner or lessee of any private camp or group of private camps that are established on property immediately adjacent to any department owned lake may, upon written consent of the Department of Fish and Wildlife Resources,~~] take water from the [~~above~~] lake without the written consent of the department. [~~a for domestic use only at the camp sites. Plumbing and sanitary facilities must meet specifications prescribed by the Bureau of Health Services, Department for Human Resources.~~]

(2) The department shall not grant permission to take water from lakes other than:

(a) For the residential use of adjacent property owners; or

(b) For temporary emergency use in times of drought.

Section 7. Cutting Weeds or Grass. Adjacent property owners may [~~4. It is permitted to~~] cut weeds or grass, or [~~and~~] clear underbrush [~~which is~~] less than two (2) inches in diameter, from department property which joins their property. [~~the department owned lands around any said lakes by the adjacent land owner.~~]

Section 8. Structures or Equipment on Department Property. (1) Persons shall not place [~~5. The construction or placement of~~] roads, ramps, buildings, steps, fences, gardens, or [~~any~~] structure on department property. [~~or equipment on the lands owned or controlled by the Department of Fish and Wildlife Resources which surround the lake included in this administrative regulation is prohibited. No mechanical equipment of any type may be placed or operated on these lands unless specifically authorized by the department after careful investigation indicates that this would be in the best interest of the lake concerned.~~

~~Section 6. All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this administrative regulation. Failure to comply with the rules and specifications set forth in this regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.~~]

(2) Without written permission from the department, persons shall not:

(a) Place objects or structures at the water's edge to stabilize banks; or

(b) Place or use mechanical equipment on department property.

(3) The department shall not issue permits for mechanical equipment or bank stabilization unless in the best interest of the lake, the public, and other adjacent property owners.

Section 9. Waivers and Appeals. (1) Persons with docks, walkways, structures or mechanical equipment that were in place

before the effective date of, but do not meet the standards contained in, this administrative regulation may apply to the department for a waiver.

(2) In deciding whether to grant or deny a waiver, the department shall consider:

(a) Whether the dock, structure or mechanical equipment:

1. Is in substantial compliance with this administrative regulation;

2. Poses a potential safety hazard;

3. Is in sound structural or mechanical condition;

(b) The geological or other physical features of the lake and the specific location; and

(c) The applicant's history of compliance with previous administrative regulations governing boat docks and structures on department property.

(3) Persons whose waiver requests are denied may request a hearing.

(a) The department shall appoint hearing officers and conduct hearings in accordance with the provisions of KRS Chapter 13B.

(b) The hearing officer shall make his recommendations to the Department of Fish and Wildlife Commission.

(c) The commission shall make its decision by majority vote.

(d) Appeals of the commission's decision shall be in accordance with the provisions of KRS Chapter 13B.

(4) ~~[(6)]~~ Persons who have not been granted permits or waivers as specified in this administrative regulation shall remove **nonpermitted or nonwaivered** docks, structures or mechanical equipment from department property before **December 31** ~~[July 1]~~, 1997.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: December 1, 1995
FILED WITH LRC: December 28, 1995, at 11 a.m.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)

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:

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 regulation.

(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. Gibralter 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 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 **per person** 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 **per person** 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, **from 8 a.m. until 4:30 p.m. eastern time during business days** [~~during regular business hours~~].

(a) Sloughs Wildlife Management Area Waterfowl Hunting Application, **August, 1995.**

(b) Ballard Wildlife Management Area Goose Hunt Application, **August, 1995.**

(c) Swan Lake Wildlife Management Area Waterfowl Hunting Application, **August, 1995.**

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.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)

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) [~~(c)~~] Shall retain forms for two (2) months after the close of goose season.

(e) [~~(d)~~] 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, **August, 1995**.

(2) Noncommercial migratory goose hunting permit, **August, 1995**.

(3) Daily waterfowl harvest register, **August, 1995**.

(4) Application for commercial waterfowl shooting area permit, **August, 1995**.

(5) Assignment of waterfowl hunting rights, **August, 1995**.

(6) Harvest report card, **August 1995**.

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.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)

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 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 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) **Beginning** [~~After~~] July 15, 1996, the department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B.

Section 9. 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.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)

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

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 **an identification card** [~~a form~~] generated by the POS device.

Section 2. Providing Information on Licenses. (1) Before perform-

ing 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.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(As Amended)

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, **revised as of July 1, 1994,** 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 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)(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.

COMPILER'S NOTE: The following administrative regulation, 805 KAR 1:150, was amended by the Administrative Regulation Review Subcommittee and the promulgating agency on April 15, 1996. However, the Subcommittee found this administrative regulation deficient, and it expired on April 15, 1996. This administrative regulation is being published only to show the amendments that were made at the meeting on April 15, 1996.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas
(As Amended)

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) [~~(1)~~] 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 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 **notice of intended activity** [~~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. **Surface owners claiming ownership in the affected property shall have thirty (30) days from the date of the second local publication in which to respond to the operator.**

(a) The notice of intended activity should include:

1. The name and address of the operator;

2. A brief description of the intended activity as set out in the operations and reclamation proposal; and

3. The date upon which the surface owner must respond; and

4. A statement of where interested persons may obtain additional information; and

5. Names of adjoining property owners of record; [~~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 **or a copy of the** unclaimed envelope containing the operations and reclamation proposal and plat, and copies of the published **notice of intended activity** [~~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 **notice of intended activity** [~~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 **a notice of request for** [~~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 **and not later than the time set forth in the notice of 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 **notice of request for** [~~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:

(1) [~~(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;

(2) [~~(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;

(3) [~~(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 45.]~~

~~(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.]~~

~~[(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 **the letter 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 **of record** 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 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING OR RECEIPT OF WRITTEN COMMENTS

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 50:010. 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.

(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 equip-

ment, 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) "PM_{10}" 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) "PM_{10} 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 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; **acetone; perchloroethylene (tetrachloroethylene)** 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, 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
CH_4 - methane
CO - Carbon monoxide
CO_2 - 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
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - 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

SO_2 - 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 [~~439-2391~~];

(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) [~~(g)~~] Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: April 10, 1996
FILED WITH LRC: April 11, 1996 at noon

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 (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
(Amended After Hearing)

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 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) "PM_{10}" 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) "PM_{10} 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 (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluor-

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; **acetone; perchloroethylene (tetrachloroethylene)** 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 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
CH_4 - methane
CO - Carbon monoxide
CO_2 - 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
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - 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
SO_2 - 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: April 10, 1996
FILED WITH LRC: April 11, 1996 at noon

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 (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
(Amended After Hearing)

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 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) "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 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) "PM_{10}" 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) "PM_{10} 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

(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; **acetone; perchloroethylene (tetrachloroethylene)** 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
CH_4 - methane
CO - Carbon monoxide
CO_2 - 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
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - 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
SO_2 - 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: April 10, 1996
FILED WITH LRC: April 11, 1996 at noon

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 (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
(Amended After Hearing)

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 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 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) "PM_{10}" 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) "PM_{10} 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

(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; **acetone; perchloroethylene (tetrachloroethylene)** 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
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
CH_4 - methane
CO - Carbon monoxide
CO_2 - 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
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - 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
SO_2 - 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: April 10, 1996
FILED WITH LRC: April 11, 1996 at noon

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 (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
(Amended After Hearing)

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 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, 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) "PM_{10}" 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) "PM_{10} 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-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; **acetone; perchloroethylene (tetrachloroethylene)** 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
CH_4 - methane
CO - Carbon monoxide
CO_2 - 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
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - 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
SO_2 - 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: April 10, 1996

FILED WITH LRC: April 11, 1996 at noon

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 (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
(Amended After Hearing)

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. I, 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 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) "PM_{10}" 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) "PM_{10} 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 com-

pounds: 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; **acetone; perchloroethylene (tetrachloroethylene)** 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 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.
"CH_4" means methane.
"CO" means Carbon monoxide.
"CO_2" 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.
"H_2O" means water.
"H_2S" means Hydrogen sulfide.
"H_2SO_4" 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.
"m^3" means cubic meter.
"min" means minute.
"mg" means milligram.
"MJ" means megajoules.
"MM" means million.
"mm" means millimeter.
"mo" means month.
"Ng" means nanograms.
"N_2" means Nitrogen.
"NO" means Nitric oxide.
"NO_2" means Nitrogen dioxide.
"NO_x" means Nitrogen oxides.
"oz" means ounce.
"O_2" means oxygen.
"O_3" 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.
"SO_2" 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: April 10, 1996
FILED WITH LRC: April 11, 1996 at noon

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 (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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Amended After Hearing)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, 49 CFR Parts 40, 382-383, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, 49 CFR 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 **and their operators meeting the definitions set forth in 49 CFR 390.5** operated for-hire or in private carriage, interstate or intrastate, 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 **CFR** [~~, Code of Federal Regulations~~] Part 40, Procedures for Transportation Workplace Drug Testing Programs [~~effective as amended through May 22, 1995~~];

(2) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations~~] Part 382, Controlled Substances and Alcohol Use and Testing [~~effective~~] as amended **at 61 Fed. Reg. 9567, March 8, 1996** [~~through October 23 (May 10), 1995~~];

(3) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations~~] Part 383, Commercial Driver's License Standards; Requirements and Penalties, [~~effective~~] as amended **at 61 Fed. Reg. 9567, March 8, 1996** [~~through June 17, 1994~~];

(4) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations~~] Part 390, General, [~~effective~~] as amended **at 61 Fed. Reg. 9567, March 8, 1996** [~~through September (June) 27, 1995~~];

(5) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations,~~] Part 391, Qualifications of Drivers, [~~effective~~] as amended **at 61 Fed. Reg. 1843, January 24, 1996 and at 61 Fed. Reg. 9567, March 8, 1996** [~~through July 28 (March 13), 1995~~];

(6) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations,~~] Part 392, Driving of Motor Vehicles, [~~effective~~] as amended **at 61 Fed. Reg. 9567, March 8, 1996** [~~through July 28 (January 11), 1995~~];

(7) [~~Title~~] 49 **CFR** [~~Code of Federal Regulations,~~] Part 393, Parts and Accessories Necessary for Safe Operation, [~~effective~~] as amended **at 61 Fed. Reg. 1843, January 24, 1996 and at 60 Fed. Reg. 46245, September 6, 1995** [~~through October 6 (January 1), 1995~~];

(8) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations,~~] Part 395, Hours of Service of Drivers[~~, effective as amended through July 28, 1995~~] [~~November 23, 1994~~];

(9) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations,~~] Part 396, Inspection, Repair and Maintenance [~~, effective as amended through July 28 (January 2), 1995~~]; and

(10) [~~Title~~] 49 **CFR** [~~, Code of Federal Regulations,~~] Part 397, Transportation of Hazardous Materials; Driving and Parking Rules[~~, effective as amended through July 28 (January 11), 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)**(a)** City buses **and** [~~,~~] 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.

(b) The [~~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 **in** [~~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 **service** [~~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" **as revised April 1, 1996** ~~[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 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; **and**

(4) ~~[Chiropractor licensed by the Kentucky Board of Chiropractic Examiners; and~~

~~(5)]~~ Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing.

Section 8. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) 61 Fed. Reg. 9567, March 8, 1996;

(b) 61 Fed. Reg. 1843, January 24, 1996;

(c) 60 Fed. Reg. 46245, September 6, 1995; and

(d) "North American Uniform Out-Of-Service Criteria" revised April 1, 1996 by the Commercial Vehicle Safety Alliance.

(2) The material incorporated by reference in this administrative regulation may be reviewed at any of the weigh stations operated by the Transportation Cabinet. 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 are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502) 564-3276.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: April 10, 1996
FILED WITH LRC: April 10, 1996 at 2 p.m.

REGULATORY IMPACT ANALYSIS

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There 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 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. These federal regulations contain the following minimum standards:

(a) Commercial driver' license standards for the issuance, testing and withdrawal of a CDL;

(b) Establishes 0.04% 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 preformed 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 department.

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, postaccident, 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 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:

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Amended After Hearing)

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 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.

(o) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewable expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured;

(2) An [~~A life~~] insurer subject to this administrative regulation may, with prior approval of the Commissioner of Insurance, take reserve credit **or establish any asset** 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 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	Risk Categories					
	A	B	C	D	E	F
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Nonpar Permanent	0	+	+	+	+	+
Traditional Nonpar Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	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: April 4, 1996
FILED WITH LRC: April 4, 1996 at 4 p.m.

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 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.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Amended After Hearing)

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(3). (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(3). (1) The trust agreement may provide that the trustee may resign only if written notice of resignation is given to the 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(3). (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 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(3). (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 **500** ~~[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 **500** ~~[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 **500** ~~[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.

(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: April 4, 1996
FILED WITH LRC: April 4, 1996 at 4 p.m.

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.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 15, 1996

COUNCIL ON HIGHER EDUCATION (Amendment)

13 KAR 2:050. Tuition at state-supported institutions of higher education in Kentucky.

RELATES TO: KRS 164.020(3)

STATUTORY AUTHORITY: KRS 13A.100, 164.020(3), 164.030, 164.284, 164.2841, 164.2842, 164.505, 164.515

NECESSITY AND FUNCTION: 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 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.

Section 1. General. The Council on Higher Education sets the tuition for all students enrolled in each state-supported [~~public~~] institution of higher education including any individually-accredited community colleges and professional schools in Kentucky. These include Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, University of Kentucky - University System, University of Louisville, Western Kentucky University, and University of Kentucky - Community College System.

Section 2. Tuition Policy. (1) Kentucky's tuition policy shall be responsive to access and marketplace; that is, the policy shall be based in large part on tuition rates at benchmark (peer) institutions in neighboring states and shall consider the need for economic access to higher education for Kentucky residents. The council shall conduct periodic surveys [~~an annual survey~~] of doctoral, master's, community college system, and professional schools [~~(dentistry, law, and medicine)~~] benchmarks' tuition consistent with the following tuition-setting principles:

(a) Maintain tuition levels for Kentucky residents as a reasonable percentage of per capita personal income (PCPI), with concomitant recommendations for adequate funding for need-based student financial aid to ensure economic access to higher education;

(b) Use all council-approved benchmark institutions as points of reference for determining tuition;

(c) Differentiate tuition rates by type of institutions (individually-accredited community colleges, regional/master's degree-granting universities, and doctoral degree-granting universities); and

(d) Provide for stability of tuition rate increases from biennium to biennium (i.e., minimize fluctuations).

(2)(a) A resident tuition objective, expressing tuition as a percentage of PCPI, is set for each type of institution and professional school.

(b) Resident undergraduate and professional school tuition rates are expressed as a percentage of PCPI.

(c) Graduate resident tuition rates are expressed as a percentage of the undergraduate resident tuition rates. Nonresident undergraduate and graduate rates are expressed as a percentage of appropriate resident rates.

(d) Tuition rates for nonresident professional schools [~~(medical, dental, and law)~~] are set at the median of similar rates at benchmark institutions.

JAMES M. MILLER, Chair

APPROVED BY AGENCY: January 22, 1996

FILED WITH LRC: April 8, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:050, Tuition at state-supported institutions of higher education in Kentucky, will be held on May 31, 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 Friday, May 26, 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. J. 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: Dennis L. Taulbee, General Counsel

(1) There are eight (8) public universities and fourteen (14) community colleges affected by this administrative regulation. Students in attendance at state-supported public institutions of higher education are indirectly affected by the operation of this administrative regulation in that tuition rate increases may result from action taken by the Council on Higher Education after a review of the application of this administrative regulation.

(2) Direct and indirect costs or savings:

(a) There are no direct or indirect costs or savings on cost of living within the geographical area covered by this administrative regulation. The geographical area is statewide. There are no direct or indirect costs or savings on employment within the geographical area. The regulation develops a process by which tuition rates are analyzed. The process does not mandate a rate increase. No public comments were received on this issue.

(b) There is no additional cost of business related to this administrative regulation. Again, the geographical area is statewide. No public comments were received on this issue.

(c) There are no additional compliance, reporting, nor paperwork requirements that would increase or decrease costs. The Council on Higher Education sets tuition at state-supported institutions of higher education under statutory authority. Neither the statute nor the administrative regulation mandates tuition increases.

1. First year: There is no additional cost to the colleges and universities implicit in this regulation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: There are no effects or direct or indirect costs or savings as a result of the changes proposed in this administrative regulation.

2. Continuing costs or savings: Same as 1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The analytical work is prepared by the council staff. No additional reporting or paperwork requirements will result from amendment of this administrative

regulation.

(4) This administrative regulation does not directly impact state or local revenue: While tuition revenues are public funds, it is impossible to predict the specific impact of this administrative regulation on tuition revenues. The administrative regulation adopts a process by which tuition rates will be evaluated; it does not mandate specific rate increases. Tuition revenues are reported through the biennial budget process.

(5) The administration of the administrative regulation is conducted by state employees paid with state general fund dollars. No additional costs or state appropriations are required as a result of the amendment of this administrative regulation.

(6) Economic impact:

(a) Geographical area: None

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

(7) Assessment of alternative methods: Periodically, the Council on Higher Education reviews the method of determining tuition rates. The current method represents consensus among the public institutions.

(8) Assessment of expected benefits:

(a) There are no effects on public health and environmental welfare within Kentucky.

(b) There would be no detrimental effect on public health and environmental welfare if this administrative regulation were not implemented.

(c) Not applicable.

(9) Statute, administrative regulation, or government policy in conflict or overlapping: None

(a) Not applicable.

(b) Not applicable.

(10) Additional information: None

(11) Tiering is not being applied. Tiering was not appropriate for this regulation.

GENERAL GOVERNMENT CABINET
State Board of Elections
(Amendment)

31 KAR 4:030. Reporting forms.

RELATES TO: KRS 117.355, 119.307

STATUTORY AUTHORITY: KRS 117.015(1) [~~117.105~~], 117.355

NECESSITY AND FUNCTION: To prescribe forms for the precinct election sheriff and the county board of elections to report elections irregularities and recommendations for improving the elections process to report absentee [~~special~~] ballot and voter assistance usage statistics and the absence of precinct election officials to specified officials.

Section 1. Incorporation by Reference. The following State Board of Elections forms are incorporated by reference [~~hereby adopted~~]:

(1) SBE 53 - "Precinct Election Sheriff's Postelection Report" (8/93) [~~effective 7/88, (see Appendix A)~~];

(2) SBE 54 - "County Board of Elections Postelection Report" (1/94) [~~effective 8/88, (see Appendix B)~~];

(3) SBE 54A - "County Board of Elections Postelection Statistical Report" (7/94) [~~effective 8/88, (see Appendix C)~~]; and

(4) SBE 54B - "County Board of Elections Precinct Election Officials Absence Report" (8/88) [~~effective 8/88, (see Appendix D)~~].

(5) SBE 33 - "List of Applicants for Absentee Ballots" (8/90).

Copies of the SBE 53, SBE 54, SBE 54A, SBE 54B, and SBE 33 may be inspected or obtained at the office of the State Board of Elections, 140 Walnut, Frankfort, Kentucky 40601, between the hours of 8 a.m. through 4:30 p.m. EST, Monday through Friday.

~~[APPENDIX A~~

~~COMMONWEALTH OF KENTUCKY~~
~~STATE BOARD OF ELECTIONS~~

~~PRECINCT ELECTION SHERIFF'S POSTELECTION REPORT~~

~~KRS 117.355(1) Within three (3) days after any primary or general election, the precinct election sheriff shall file a report with the chairman of the county board of elections and with the local grand jury. The report shall include any irregularities observed and any recommendations for improving the election process.~~

_____ ~~County~~

_____ ~~Precinct~~

_____ ~~Precinct Election Sheriff~~

~~(Name)~~

~~IRREGULARITIES OBSERVED: (If you observed any irregularities, describe in your own words with as many details as possible, including names of alleged violators of election laws. Reported violations should include, but not be limited to violations of KRS 117.255 relating to assisting voters and execution of the voter assistance forms, adjusting the voting machine in primary elections to enable the voter to vote for only persons for whom the voter is entitled to vote, voting more than once, and voting supplemental paper ballots. Violations of KRS 117.235 relating to electioneering must also be reported. If more space is required, attach additional sheets as necessary. If no violations are observed, so indicate.)~~

_____

_____

_____

_____

~~KRS 117.355, 117.255(13)~~ ~~Goldenrod - County Board of Elections~~
~~Yellow - Grand Jury~~
~~SBE 53 (8/88)~~ ~~Green - Precinct Election Sheriff~~

APPENDIX B

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

COUNTY BOARD OF ELECTIONS POSTELECTION REPORT

_____ County, _____ Election held _____, 19____

KRS 117.355(2) Within ten (10) days after any primary or general election, the county board of elections shall file a report with the state board of elections, the registry of election finance and the local grand jury. The report shall include any irregularities of which the county board has knowledge and any recommendations for improving the election process. The report shall also include a precinct by precinct breakdown of the number of voters requiring assistance to vote and the reasons therefor; the number of special ballots cast by category; and any other information required by the state board.

REPORT OF IRREGULARITIES: (If you have knowledge of any irregularities, describe in your own words with as many details as possible, including names of alleged violators of election laws. If more space is required, attach additional sheets as necessary. If no violations are known, so indicate.)

_____

_____

_____

_____

_____

KRS 117.355(2)

Yellow - Grand Jury
Pink - Registry of Election Finance
Blue - State Board of Elections

SBE 54 (8/88)

Green - Precinct Election Sheriff

APPENDIX C

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

COUNTY BOARD OF ELECTIONS POSTELECTION STATISTICAL REPORT

_____ County, _____ Election held _____, 19____

PRECINCT (Name or Number)	ENTER NUMBER OF VOTERS PER PRECINCT						
	SPECIAL BALLOTS			VOTER ASSISTANCE			
	Regular	Disabled	Medical Emergency	Certified Permanently Disabled	Inability to Read English	Blind	Other Disability

(Attach additional pages if necessary) Attach to County Board of Elections Post - Election Report (SBE 54)

_____
Chairman, County Board of Elections

~~Date Submitted~~

~~KRS 117.355(2)~~ ~~Yellow - Grand Jury~~
~~Pink - Registry of Election Finance~~
~~Blue - State Board of Elections~~
~~SBE 54A (8/88)~~ ~~Goldenrod - County Board of Elections~~

~~APPENDIX D~~

~~COMMONWEALTH OF KENTUCKY~~
~~STATE BOARD OF ELECTIONS~~

~~COUNTY BOARD OF ELECTIONS PRECINCT ELECTION OFFICIALS ABSENCE REPORT~~

~~County, Election held , 19~~

~~Pursuant to KRS 119.307, the following election officials failed to appear and serve at the election, and were not excused by the County Board of Elections.~~

~~NAME OF PRECINCT ELECTION OFFICIAL~~	~~PRECINCT NAME OR NUMBER~~

~~(Attach additional pages if necessary) Attach to County Board of Elections Postelection Report (SBE 54)~~

~~Chairman, County Board of Elections~~

~~Date Submitted~~

~~KRS 119.307, 117.355(2)~~ ~~Yellow - Grand Jury~~
~~Pink - Registry of Election Finance~~
~~Blue - State Board of Elections~~
~~SBE 54B (8/88)~~ ~~Goldenrod - County Board of Elections~~]

JOHN Y. BROWN III, Chairman
APPROVED BY AGENCY: March 11, 1996
FILED WITH LRC: April 11, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on May 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 meeting shall notify this agency in writing by May 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment 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

(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.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 5:021. Manual of Policies and Procedures.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY AND FUNCTION: The Finance and Administration Cabinet is required by KRS 45A.045(2) to promulgate administrative regulations to govern purchasing by various state agencies, and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation implements the requirement that this manual be incorporated by reference as an administrative regulation. This administrative regulation repeals 200 KAR 5:020, Finance and Administrative Cabinet Manual of Policies and Procedures, which is a previous version of the manual incorporated by reference in this administrative regulation.

Section 1. The purchasing policies and procedures of the "Finance and Administration Cabinet Manual of Policies and Procedures (1996 [~~1994~~])", is hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the administrative regulations of the Finance and Administrative Cabinet adopted pursuant to KRS Chapter 45A. The "Finance and Administration Cabinet Manual of Policies and Procedures (1996 [~~1994~~])" shall be available for public inspection and copying Monday through Friday, excluding state holidays, from 8 a.m. to 4:30 p.m. at the Office of Management and Budget, Finance and Administrative Cabinet, Capitol Annex, Frankfort, Kentucky.

JOHN P. MCCARTY, Secretary

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1996 at 9:30 a.m., in the offices of the Finance and Administration Cabinet, Room 386, Capitol Annex, Frankfort, Kentucky 40601. Persons interested in attending this hearing shall notify the agency representative designated below no later than five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Ed Ross, Controller, Office of the Controller, 702 Capitol Annex, Suite 384, Frankfort, Kentucky 40601, (502) 564-7750.

REGULATORY IMPACT ANALYSIS

Contact Person: Ed Ross, Controller

(1) Type and number of entities affected: This regulation will affect all agencies desiring to participate in the Procurement Card Program. The pilot program will initially affect agencies within the General Government Cabinet, Finance and Administration Cabinet, and the Workforce Development Cabinet. However, it is anticipated to impact agencies in all cabinets of the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated

to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(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 anticipated compliance, reporting or paperwork requirements. There should be no effect upon competition.

2. Second and subsequent years: There are no anticipated compliance, reporting or paperwork requirements. There should be no effect upon competition.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Controller will be required to assist each agency in implementing the Procurement Card Program. The implementation of the program in the initial agency is expected to cost the Office of the Controller $3,000. This reflects 3 weeks staff time at $45,000 per year. Implementation in each agency thereafter is estimated to cost $400, estimated at 2 days staff time. While these individuals are already salaried employees of the agency, this process will necessitate they not perform other required duties to complete the implementation process. A one-time charge for customized software, utilized in the payment process, of $1,500 will be paid by the Office of the Controller. After the pilot period and until the software is installed in 31 agency sites, the software will cost on a tiered basis from $150 to $50 per month. Ongoing operation of the program is anticipated to result in minimal savings to the Office of the Controller, as the effort required to make payments through the Procurement Card Program will be offset by the effort required previously to process the payments to the direct merchants. Savings in agencies will depend on the internal procedures associated with their individual procurement practices.

2. Continuing costs or savings: Implementation in each successive agency is anticipated to cost the Office of the Controller $400, estimated at 2 days staff time. While these individuals are already salaried employees of the agency, this process will necessitate they not perform other required duties to complete the implementation process. After the pilot period and until the software is installed in 31 agency sites, the software will cost on a tiered basis from $150 to $50 per month. Ongoing operation of the program is anticipated to result in minimal savings to the Office of the Controller, as the effort required to make payments through the Procurement Card Program will be offset by the effort required previously to process the payments to the direct merchants. Savings in agencies will depend on the internal procedures associated with their individual procurement practices.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: Reporting and paperwork will be diminished by the agency, the Office of the Controller, and the Office of the Treasury via a single electronic payment to the issuing bank instead of multiple payments to individual merchants.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Office of the Controller will be required to absorb all additional implementation costs in its operating budget.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulation.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Continuation of the current practice of making individual payments to each of the Commonwealth's merchants for each procurement would require a continuation of exorbitant personnel time for low-cost dollar purchases. The utilization of procurement cards will enable agencies to utilize staff in areas that have the greatest financial impact on the operation of their legislated program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Controller and the Division of Purchases, there are no statutes, administrative regulations or governmental policies which are in conflict, are overlapping, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affect small purchase procedures. Small purchases account for approximately 25% of the Commonwealth's purchase order documents, and less than 1% of the Commonwealth's total purchase order expenditures.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS 324.160(1)(e) [~~Chapter 324~~]

STATUTORY AUTHORITY: KRS 324.160(1)(e), (j), 324.282[~~, 324.285(5)~~]

NECESSITY AND FUNCTION: [~~Confusion exists among brokers and sales associates, and consumers, about the various agency relationships which exist in real estate brokerage transactions.~~] This administrative regulation establishes the types of relationships between brokers, sales associates, and consumers: [~~, and~~] required forms; and informs brokers, sales associates, and consumer [~~the consumer~~] of their rights and duties [~~of brokers, sales associates, and consumers~~].

Section 1. Definitions. (1) "Delivery" means delivery of an item to a prospective party or his broker or sales associate [~~agent~~] by:

(a) Mail;

(b) FAX transmission;

(c) Messenger; or

(d) Hand.

(2) "First contact" means the period:

(a) Before a contract containing a duty of representation and compensation is entered into by a:

1. Prospective party who does not have a broker or sales associate [an agent]; and

2. A broker or sales associate [Licensee] who has offered to represent him.

(b) Before the beginning of discussions relating to a real estate transaction between a:

1. Prospective party who does not have a broker or sales associate [an agent]; and

2. A broker or sales associate [Licensee] who has proposed to discuss the real estate transaction with him.

(3) "First substantial contact" means the period before a written offer to purchase is presented.

(4) "Prospective party" means a person who:

(a) Enters a listing contract as a seller;

(b) Enters a buyer broker agreement as a buyer; or

(c) Seeks or uses the services of a broker or sales associate [person licensed by the Kentucky Real Estate Commission].

(5) "Prospective party who is represented by a broker or sales associate [an agent]" means a person who has entered into a current listing contract, or buyer broker agreement with a broker or sales associate [licensee].

Section 2. The provisions of this administrative regulation shall not apply to:

(1) Sales of real estate at auction; or

(2) Property management of real estate.

Section 3. Prospective Party Information. (1) A broker or sales associate [licensee] shall deliver to a prospective party an:

(a) "Agency Information For Consumers Bulletin", on the first contact; and

(b) "Agency Disclosure Form", on the first substantial contact.

(2) An "Agency Disclosure Form" shall:

(a) Be signed by each:

1. Prospective party to the transaction; and

2. Broker or sales associate [Licensee] involved in the transaction; and

(b) Identify:

1. Each prospective party known to the broker or sales associate [licensee] making the disclosure except that prospective parties who intend to buy or rent for a nonowner occupant residential use who direct that their identity not be disclosed in writing, shall not be identified; and

2. If a prospective party is represented by broker or sales associate [an agent], the name of the broker or sales associate [agent], his real estate company, and whom they represent except as provided in subparagraph 1 of this paragraph;

3. The real estate that is the subject of the negotiation;

(c) Describe the personal, family, or business relationships between:

1. The broker or sales associate [licensee] making the disclosure; and

2. Each prospective party known to the broker or sales associate when [licensee at the time] the disclosure is made;

(d) State whether the broker or sales associate [licensee] making the disclosure is acting as a principal as a prospective:

1. Seller;

2. Buyer;

3. Lender; or

4. Investor.

(3) The "Agency Disclosure Form" and the "Agency Information For Consumers Bulletin" required by subsection (1) of this section shall be:

(a) The "Agency Disclosure Form Approved By Kentucky Real Estate Commission", and the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission"; or

(b) An Agency Disclosure Form, and Agency Information For Consumers Bulletin, that have been developed by the broker or sales associate [licensee] and approved by the commission.

(4) An "Agency Information For Consumers Bulletin" developed by a licensee:

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

(b) May contain the principal broker's [a licensee's] logo and be in a format that differs from the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission".

(5)(a) An "Agency Disclosure Form" or "Agency Information For Consumers Bulletin" that has been developed by the broker or sales associate [licensee], shall be submitted to the commission for approval.

(b) The general counsel of the commission shall:

1. Review the form or bulletin;

2. Make a recommendation to the commission that the form or bulletin be approved or disapproved; and

3. Inform the broker or sales associate [licensee] of the commission's decision.

Section 4. [3.] Commission Review of Licensee Documents. The commission shall:

(1) Review licensee listing agreements, buyer broker agreements, and purchase agreements;

(2) Approve agreements that it determines contain the information required by this administrative regulation; and

(3) Inform licensees of commission action.

Section 5. [4.] Incorporation By Reference. (1) The following documents are incorporated by reference:

(a) "Agency Disclosure Form Approved By Kentucky Real Estate Commission (Sep-07-1995)"; and

(b) "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission (Sep-07-1995)".

(2) They may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville Kentucky 40223, 8 a.m. to 4:30 p.m., Monday through Friday.

SUE TEEGARDEN, Chairman

APPROVED BY AGENCY: March 12, 1996

FILED WITH LRC: April 4, 1996 at noon

PUBLIC HEARING: A public hearing on this proposed amendment to an administrative regulation shall be held on May 21, 1996, at 10 a.m., at the Hearing Room, Kentucky Real Estate Commission Offices, 10200 Linn Station Road, Suite 201, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 15, 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: Bernadette Gradney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, (502) 425-4273.

REGULATORY IMPACT ANALYSIS

Contact person: John L. Ackman, Jr.

(1) Type and number of entities affected: This administrative regulation will affect 11,089 actively licensed real estate brokers and

sales associates, throughout the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented is expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cost of doing business will be minimally affected, due to the cost of using new or additional forms.

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

1. First year following implementation: Real estate brokers and sales associates compliance, reporting and paperwork requirements will be affected, in the first year by using and maintaining in files, the "Agency Disclosure Form", and distributing to consumers the "Agency Information for Consumers Bulletin". There will be no effect on competition.

2. Second and subsequent years: These requirements will continue, as will the costs of the forms, in the second and continuing years. There will be no effect on competition.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body the first year.

2. Continuing costs or savings: There are no continuing costs or savings to the promulgating administrative body.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements on the promulgating administrative body.

(4) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of the revenue to be used for the implementation and enforcement of the administrative regulation is totally from fees collected from licensees of the Kentucky Real Estate Commission.

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

(a) Geographical area in which administrative regulation will be implemented: The economic impact of the administrative regulation, including the effects of the economic activities arising from the administrative regulation will be none.

(b) Kentucky: The economic impact of the administrative regulation, including the effects of the economic activities arising from the administrative regulation will be none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for accomplishing the purpose of the administrative regulation were considered.

(8) Assessment of expected benefits: The expected benefits of the administrative regulation include: increased knowledge and understanding between real estate brokers and sales associates, and consumers, of the legal and practical consequences of the agency relationships which are created in typical real estate brokerage transactions.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The effects of the administrative regulation on the public health and environmental welfare of the geographical area in which the administrative regulation will be implemented , and upon the state, will be none.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on the environment or on public health if the administrative regulation is 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: There is no statute, rule, regulation or governmental policy with which the administrative regulation conflicts, overlaps or duplicates.

(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: There is no additional information or comment.

(11) TIERING: Is tiering applied? Tiering was applied to clarify that activities for which disclosure is not necessary are not included by this administrative regulation.

JUSTICE CABINET
Juvenile Detention Facilities
(Amendment)

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

RELATES TO: KRS 15A.210

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

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[~~/or~~] licensure or [~~/~~] certification criteria specified by their respective professional disciplines, such as [~~i.e.,~~] 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;

(h) [~~(i)~~] Provide for the prompt notification of juveniles' parents or [~~/~~] guardians and the responsible agency in case of serious illness,

surgery, injury or death;

(i) [~~(i)~~] 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;

(j) [~~(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) [~~(l)~~] 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) [~~(m)~~] 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) [~~(n)~~] 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) [~~(o)~~] 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 [~~are~~] 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 [~~is~~] 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) [~~(p)~~] Uphold the principle of confidentiality of the health record and support these requirements:

1. The active health record shall be [~~is~~] maintained separately from the confinement record;

2. Access to the health record shall be [~~is~~] controlled by the health authority; and

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

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

(q) [~~(r)~~] 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 [~~and/~~]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 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/~~]or 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 documenter;

(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.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 22, 1996 at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 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

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

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

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

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

(10) Any additional information or comments: None

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

JUSTICE CABINET
Juvenile Detention Facilities
(Amendment)

500 KAR 6:150. Programs.

RELATES TO: KRS 15A.210

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

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) Assessment for education 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.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at 11 a.m.

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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

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

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

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

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

(10) Any additional information or comments: None

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

JUSTICE CABINET
Juvenile Detention Facilities
(Amendment)

500 KAR 6:200. Physical plant.

RELATES TO: KRS 15A.210

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

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. [~~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) Facilities in operation before July 1, 1987 shall be operated with day rooms of no more than twenty-five (25) juveniles each. [~~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 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:

(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 may be served outside the cells or sleeping areas.

(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 using the day room at one (1) time and shall be separate and distinct from the sleeping area, which is immediately adjacent and accessible.

E. DANIEL CHERRY, Secretary

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 22, 1996 at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 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

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

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

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

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

(10) Any additional information or comments: None

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

DEPARTMENT OF CORRECTIONS
(Amendment)

501 KAR 6:020. 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 April 12 [~~March 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
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness

9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.5	Execution
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits [~~(Amended 3/14/96)~~]
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.7	Involuntary Psychotropic Medication Policy
13.9	Dental Services
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs
15.7	Inmate Account Restriction
15.8	Unauthorized Substance Abuse Testing
16.1	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.1	Classification of the Inmate
18.5	Custody and Security Guidelines
18.6	Classification Document
18.7	Transfers
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
18.17	Interstate Agreement on Transfers
18.18	International Transfer of Inmates
19.1	Government Services Projects
19.2	Community Services Projects
19.3	Inmate Wage Program
20.1	Educational Programs and Educational Good Time
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
21.2	Phase I: Program Selection Assessment Criteria
21.3	Program Schedule - Phase II and Phase III
21.4	Platoon Size and Composition
21.5	Physical Conditions Program Component
21.6	Group and Individual Counseling
21.7	Drug and Alcohol Abuse Counseling and Treatment
21.8	Work Programs Component
21.9	Education and Life Management
21.10	Auxiliary Services
21.11	Offenses and Penalties
22.1	Privilege Trips
23.1	Religion
25.1	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program
25.4	Inmate Furloughs
25.6	Community Center Program
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
25.11	Victim Notification
27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies
27-08-01	Use of Force
27-09-01	Kentucky Community Resources Directory
27-10-01	Advanced Supervision
27-11-01	Intensive Supervision
27-12-01	Supervision: Case Classification
27-12-02	Risk[~~/Needs~~] Assessment (Amended 4/12/96)
27-12-03	Initial Interview
27-12-04	Conditions of Regular Supervision/Request for Modification
27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Education/Vocational Referral
27-12-08	Supervision Plan
27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-01	Drug and Alcohol Testing of Offenders
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision

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.

DOUG SAPP, Commissioner
APPROVED BY AGENCY: April 12, 1996
FILED WITH LRC: April 15, 1996 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 22, 1996 at 9 a.m., in the 5th Floor Conference Room 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.

DEPARTMENT OF CORRECTIONS
(Amendment)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. (1)(a) Green River Correctional Complex Policies and Procedures, April 11 [~~March 13~~], 1996, is incorporated by reference.
(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.
(2) Green River Correctional Complex Policies and Procedures include:

GRCC 01-05-01 Procedures Officer
GRCC 01-09-01 Duty Officer Responsibilities
GRCC 01-10-01 Smoking: GRCC Facility [~~(Amended 3/13/96)~~]
GRCC 02-01-02 Fiscal Management Accounting Procedures
GRCC 02-01-03 Fiscal Management Agency Funds
GRCC 02-02-01 Fiscal Management: Budget
GRCC 02-03-01 Fiscal Management: Audits
GRCC 02-06-01 Inmate Canteen

GRCC 02-07-01 Inmate Personal Funds (Added 4/11/96)
GRCC 04-01-01 Employee Training and Staff Development
GRCC 05-01-01 Information System [~~(Amended 3/13/96)~~]
GRCC 06-01-01 Offender Records
GRCC 08-03-01 Escape Plan (Added 4/11/96)
GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation (Added 4/11/96)
GRCC 08-06-01 Response Units (Added 4/11/96)
GRCC 08-07-01 Natural Disaster/Earthquake (Added 4/11/96)
GRCC 09-02-01 Drug Abuse Testing (Added 4/11/96)
GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Added 4/11/96)
GRCC 09-04-01 Inmate Death (Added 4/11/96)
GRCC 09-05-01 Construction Crew Entry and Exit Guidelines (Added 4/11/96)
GRCC 09-06-01 Entry and Exit Procedures (Added 4/11/96)
GRCC 09-07-01 Institutional Inspections (Added 4/11/96)
GRCC 09-08-01 Storage, Issue and Use of Chemical Agents (Added 4/11/96)
GRCC 09-09-01 Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence (Added 4/11/96)
GRCC 09-10-01 Emergency Release from Locked Areas (Added 4/11/96)
GRCC 10-01-01 Special Management Unit (Amended 4/11/96)
GRCC 11-01-01 Food [~~Good~~] Service Guidelines (Amended 4/11/96)
GRCC 11-02-01 Food Service: Security (Amended 4/11/96)
GRCC 11-03-01 Dining Room Guidelines (Amended 4/11/96)
GRCC 11-04-01 Food Service: Meals
GRCC 11-04-02 Food Service: Menu, Nutrition and Special Diets
GRCC 11-06-01 Health Requirements of Food Handlers
GRCC 11-07-01 Food Service: Inspections and Sanitation (Amended 4/11/96)
GRCC 11-08-01 Food Service: Purchasing, Storage and Farm Products (Amended 4/11/96)
GRCC 12-01-01 Clothing, Bedding Hygiene Supplies and Barber Services [~~(Added 3/13/96)~~]
GRCC 13-01-01 Organization of Medical Services [~~(Added 3/13/96)~~]
GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call [~~(Added 3/13/96)~~]
GRCC 13-02-02 Medical Services Copayment [~~(Added 3/13/96)~~]
GRCC 13-03-01 Use of Pharmaceutical Products [~~(Added 3/13/96)~~]
GRCC 13-04-01 Health Records [~~(Added 3/13/96)~~]
GRCC 13-04-02 Psychological and Psychiatric Reports [~~(Added 3/13/96)~~]
GRCC 13-05-01 Management of Serious and Infectious Diseases [~~(Added 3/13/96)~~]
GRCC 13-07-01 Medical Restraints (Added 4/11/96)
GRCC 13-08-01 Eye Care (Added 4/11/96)
GRCC 13-09-01 Dental Care (Added 4/11/96)
GRCC 14-01-01 Inmate Rights and Responsibilities
GRCC 14-02-01 Legal Services Program
GRCC 15-01-01 GRCC Adjustment Program and Procedures
GRCC 16-01-01 Inmate Visiting [~~(Added 3/13/96)~~]
GRCC 16-02-01 Inmate Correspondence and Privilege Mail [~~(Amended 3/13/96)~~]
GRCC 16-03-01 Inmate Telephone Communications [~~(Amended 3/13/96)~~]
GRCC 16-04-01 Inmate Packages [~~(Added 3/13/96)~~]
GRCC 17-01-01 GRCC Inmate Property Control [~~(Added 3/13/96~~]
GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process [~~(Added 3/13/96)~~]
GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair [~~(Added 3/13/96)~~]
GRCC 18-01-01 Inmate Classification [~~(Amended 3/13/96)~~]
GRCC 18-02-01 Meritorious Housing
GRCC 18-02-02 Meritorious Visitation Program [~~(Added 3/13/96)~~]
GRCC 19-01-01 Inmate Work Programs [~~(Amended 3/13/96)~~]
GRCC 20-01-01 Educational Programs
GRCC 21-01-01 Library Services (Amended 4/11/96)
GRCC 22-01-01 Recreation Programs (Amended 4/11/96)
GRCC 22-02-01 Inmate Organizations
GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates [~~(Added 3/13/96)~~]
GRCC 24-01-01 Social Services and Counseling Program
GRCC 25-01-01 Prerelease Program [~~(Added 3/13/96)~~]

DOUG SAPP, Commissioner
APPROVED BY AGENCY: April 11, 1996
FILED WITH LRC: April 12, 1996 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 22, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Debra Judd
(1) Type and number of entities affected: 209 employees of the correctional institutions, 614 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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of District Support Services
(Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540, 49 CFR Sections 382.201 through 382.215, 391

STATUTORY AUTHORITY: KRS 156.160, 189.540

NECESSITY AND FUNCTION: KRS 156.160 requires the Kentucky Board of [~~State Board for Elementary and Secondary~~] Education to adopt administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the state board to adopt administrative regulations to govern the design and operation of school buses. This administrative regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. (1) A local board of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and events related to the schools.

(2) The medical examination shall include tests for:

(a) Hearing and vision disorders;

(b) Emotional instability; and

(c) Serious medical conditions including:

1. Diabetes;
2. Epilepsy;
3. Heart disease; and
4. Other chronic or communicable diseases if indicated in the opinion of the examining physician.

(3) The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations.

(4) A medical examination of a school bus driver shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent or his designee.

(5) The forms required by subsection (4) of this section, TC 94-35, July 1990, and Supplement to TC 94-35, are incorporated by reference and may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 2. (1)(a) A criminal records and driving history check shall be performed by a local district on new school bus drivers both:

1. Prior to initial employment; or
2. After a break in service (excluding summers).

(b) Employment shall be contingent upon the requirements of paragraph (a) of this subsection.

(c) A school bus driver shall immediately report to the local superintendent or his designee a:

1. Revocation of his driver's license;
2. Conviction for DUI; or
3. Conviction for reckless driving.

(2)(a) Controlled substance and alcohol use and testing in accordance with KDE - 1530, March, 1996 [~~September, 1994~~], shall be a condition of employment for:

1. School bus drivers;
2. Substitute drivers, coaches, teachers, and volunteers who drive school buses;
3. School bus mechanics; and
4. Other safety-sensitive jobs requiring a CDL license.

(b) The controlled substance and alcohol use and testing program shall include the following tests:

1. Preemployment testing (controlled substance only);
2. Postaccident testing;
3. Random testing; and
4. Reasonable suspicion testing.

(c) Prospective employees who test positive for controlled substances[~~, or register 0.02 or above, on the evidential breath test (EBT),~~] shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to pupil transportation.

(d) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties having a confirmed positive test for controlled substances shall be relieved of those duties immediately.

(e) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties who tests above 0.02 percent on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately.

(f) The drug testing procedures found in KDE-1530, March, 1996 [~~September, 1994~~], are incorporated herein by reference, a copy of which may be inspected, copied or obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

(g) A person shall not be employed as a school bus driver if convicted of driving a motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. A person shall not drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. A driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) A person shall not drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. A person shall not drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus

driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. [~~Effective April 1, 1992,~~] School bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. [~~Beginning April 1, 1992,~~] Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2)(a) Prior to acceptance into the driver training program, a driver applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in the Division of Pupil Transportation curriculum.

(b) The driver applicant's score sheet shall become a part of the driver's record.

(c) A driver shall demonstrate the following skill levels:

1. Vehicle knowledge;

2. Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:

a. Ninety (90) degree left hand turns;

b. Ninety (90) degree right hand turns;

c. Straight ahead;

d. Irregular surface maneuverability at speeds;

e. Backing ability using mirrors only; and

f. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times:

(a) Laws and regulations - one (1) hour;

(b) Driving fundamentals - one (1) hour;

(c) Care and maintenance - one (1) hour;

(d) Critical situations - one (1) hour;

(e) Accidents and emergency procedures - one (1) hour;

(f) Pupil management - one (1) hour;

(g) First aid - one (1) hour;

(h) Special education transportation - five-tenths (.5) hour;

(i) Extracurricular trips - five-tenths (.5) hour; and

(j) Vehicle operations - three (3) hours.

(k) Vehicle control at speed - one (1) hour; and

(l) Bus route identification, driver review and instruction - two (2) hours.

(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days the following:

(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and

(b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days of driving.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.

(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) A driver who does not complete the training update and recertification as required by subsection (2) of this section shall be required to complete the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent or his designee any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent or his designee.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. (1) If a pupil's conduct on the bus makes it unsafe for the bus to continue on its route, it shall be the duty of the driver to:

(a) Make a determination as to the potential danger to other students on the bus; and

(b) Take action against the student either by:

1. Requesting that the student stop engaging in the prohibited conduct;

2. Ordering the student to leave the bus;

3. Ejecting the pupil from the bus or sending for assistance if the student fails to comply with the driver's order or request.

(2) Ejecting a pupil from the bus shall be done only in the most extreme circumstances.

(3) If a student has been ejected from a bus as the result of conduct specified in subsection (1) of this section, the driver shall notify the following parties of the action taken as soon as possible:

(a) The principal of the school where the pupil attends[;] or the district superintendent or his designee; and

(b) The student's parent or legal guardian.

Section 25. (1) The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level.

(a) The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track.

(b) After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding.

(c) When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks.

(2)(a) In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks.

(b) Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this administrative regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

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: April 4, 1996

FILED WITH LRC: April 5, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 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 May 26, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

(1) Type and number of entities affected: Kentucky Department of Education, Division of Pupil Transportation; 176 school districts; 12,000+ drivers possessing commercial driver licenses who are employed by the school districts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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: approximate cost decrease of $32,000 (approximately 800 drivers which would have been required to take the pre-employment alcohol test at $40 per test).

2. Second and subsequent years: No additional.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

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

(b) Kentucky: None

(7) Assessment of alternative methods; methods why alternatives were rejected: It is no longer federally mandated to conduct preemployment alcohol tests on drivers possessing commercial driver licenses.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict: 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.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Amendment)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A), 34 CFR 361.31(b)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This 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 clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

Section 2. Computer Hardware and Software Purchases. The department [~~of Vocational Rehabilitation~~] shall not purchase computers, microcomputers, other hardware or software for the personal use of applicants or clients. The agency may consider the provision or upgrade or replacement of computer hardware and software when:

(1) The equipment is essential to compensate for the limitations caused by the disability;

(2) The equipment is required for the client to achieve a vocational objective of competitive employment;

(3) In addition, one (1) or more of the following criteria shall be met:

(a) The equipment is required for vocational preparation;

(b) The equipment is required by the job and no provision is made by the employer to supply the equipment; or

(c) The equipment will enable a client to become competitive with nondisabled employees performing the same duties.

Section 3. Computer Upgrades or Replacements. (1) Computer upgrades or replacements may be provided for a client when needed for obtaining and maintaining employment.

(2) Costs of upgrading or replacing computers in excess of $1,000 shall require the approval of the Director of Program Services or a designee.

(3) Computer upgrades or replacements in excess of $6,000 may be provided if the Division Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

Section 4. Second Time Upgrades or Replacements. (1) Except as provided in this section, the agency shall provide only one (1) computer upgrade or replacement per individual.

(2) The agency may approve a second time upgrade or replacement under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history; and

(b) The client's employer attests that the upgrade or replacement is needed to maintain employment.

Section 5. Computer Repair. (1) The agency shall not provide repair to computers.

(2) Maintenance and repair of computers beyond the warranty shall be the responsibility of the individual.

Section 6. Vehicle Modification (General). (1) Modification of a van for a client who can be functional in an automobile shall be authorized only to the maximum cost of the automobile modification.

(2) The agency may provide van modifications for clients determined by the agency specialist of the Driver Evaluation/Vehicle Modification Program to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications shall be provided only on the recommendation of the agency specialist of the Driver Evaluation/Vehicle Modification Program.

(4) Individuals who are not clients of the agency in need of drive evaluation, driver training or vehicle modification may purchase evaluation services on a fee for service basis when all agency applicants and clients have been served.

(5) Vehicle modification shall be provided only after the client completes a driver evaluation and vehicle modification assessment by an agency specialist of the Driver Evaluation/Vehicle Modification Program.

(6) Vehicle modifications shall be inspected and approved by an agency specialist from the Driver Evaluation/Vehicle Modification Program before payment is made.

Section 7. [~~4.~~] Specific Modifications Costing Less than $1,000. Agency staff may approve modifications to a vehicle when the following conditions apply:

(1) Modifications is simple and is not related to overall vehicle engine or body condition; and

(2) Modification is not of a substantial structural nature; and

(3) Maintenance records and overall condition of the vehicle can justify modification.

Section 8. [~~5.~~] Specific Vehicle Modifications Costing More Than $1,000. (1) Except as provided in subsection (2) of this section, vehicle modifications costing in excess of $1,000 shall be provided only for clients whose vocational objective is competitive employment and who are within one (1) year of job placement.

(2) Vehicle modifications may be provided to individuals who are not within one (1) year of job placement if the division director of program services determines that documentation exists that the modification would result in a substantial cost savings to the department.

(3) Vehicle modifications costing in excess of $1,000 shall only be provided on new vehicles except as provided in this section.

(4) The agency may approve vehicle modifications for older vehicles in excess of $1,000 when maintenance records and overall condition of the vehicle can justify the modification as attested by an agency specialist of the Driver Evaluation/Vehicle Modification Program. The modification must demonstrate cost savings to the agency.

Section 9. [~~6.~~] Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for a client if [~~when such upgrades are~~] needed for obtaining or maintaining employment.

(2) Upgrading and repair of vehicle modification in excess of $1,000 shall require the approval of the Director of Program Services or a designee.

(3) Upgrade or repair of vehicle modifications in excess of $6,000 may be provided if the Division Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

Section 10. [~~7.~~] Second Time Modifications. (1) Except as provided in this section, the agency shall provide only one (1) vehicle modification per client.

(2) The agency may approve a second time vehicle modification under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history; and

(b) The client's employer attests that the modification is needed to maintain employment; and

(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.

Section 11. [~~8.~~] Vehicle Repair. (1) The agency shall not provide repair to vehicles.

(2) The agency shall not provide or repair any standard or optional automatic equipment. Equipment includes but is not limited to: power steering, power brakes, automatic transmission, air conditioning, tilt steering, etc.

Section 12. [~~9.~~] Property Modification. (1) Permanent, nonrecoverable modification to private homes, businesses or property is an allowable expenditure if determined essential to achieve the employment objective of the individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The individual shall meet economic need qualifications. The counselor shall make every attempt to utilize recoverable, nonpermanent modifications if possible or cost effective.

(2) The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including but not limited to the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.

(3) Except as provided in this section, property modifications in excess of $6,000 shall not be allowed.

(4) Property modifications in excess of $6,000 may be provided if the division director of program services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

SAM SERRAGLIO, Commissioner
RODNEY CAIN, Secretary
APPROVED BY AGENCY: April 3, 1996
FILED WITH LRC: April 11, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1996 at 10 a.m. Eastern Time in the DVR Training Room, 209 St. Clair Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by May 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing 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: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (502) 564-4440. The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Applicants and clients of the Department of Vocational Rehabilitation who are in need of rehabilitation technology services.

(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, 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: The only reporting requirements are those needed to promulgate this 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: No revenue implication.
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: None
(b) Kentucky: None
(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.
(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: Not applicable.
(c) If detrimental effect would result, explain detrimental effect: Not applicable.
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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: Officials of the Rehabilitation Services Administration have advised that the policy described in this administrative regulation be changed in order to conform with federal guidelines. This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.
(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.
2. State compliance standards. This administrative regulation details the agency standards for providing rehabilitation technology to eligible individuals.
3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to restrict access to services based on acceptable policy.
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 or imposition of the stricter standards, or additional or different responsibilities or requirements. Rehabilitation technology is heavily emphasized in the 1992 amendments to the Rehabilitation Act. Technology is available to assist individuals with severe disabilities to achieve suitable employment outcomes. This regulation establishes guidelines for the provision of services that are not addressed in the Act.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Amendment)

781 KAR 1:070. Fees for service.

RELATES TO: KRS 151B.190
STATUTORY AUTHORITY: KRS 151B.185, 151B.195
NECESSITY AND FUNCTION: KRS Chapter 151B [~~agrees to comply with federal vocational rehabilitation acts and~~] permits the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing fees for vocational rehabilitation services to individuals and entities other than agency clients. This administrative regulation implements that provision.

Section 1. Definitions. (1) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.
(2) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(B), which is adopted without change.

Section 2. Carl D. Perkins Comprehensive Rehabilitation Center's [~~Outpatient~~] Fees for Services. (1) Except as provided in this section, [~~Outpatient services rates shall be determined for one (1) year beginning in October of each year.~~] rates shall be determined by center utilization, [~~and~~] budget expenditures and comparable fees charged by other vendors.
(2) The Carl D. Perkins Comprehensive Rehabilitation Center's [~~outpatient~~] fees for services shall be:
(a) Vocational evaluation - $132 per day. [~~five (5) day evaluations - $380.~~]
(b) Mobile vocational evaluation - $100.
(c) Work hardening/conditioning fees based on prevailing market rates in the Kentucky, West Virginia area.
(d) Vocational Adjustment Program - $48 per day.
(e) Vocational training tuition - $43 per day or $150 per month [~~- $150~~].
(f) [~~(e)~~] Psychological services based on prevailing market rates in the Kentucky, West Virginia area. [~~evaluation (complete) - $160.~~]
(g) [~~(d)~~] Psychiatric services - Medicare rate plus ten (10) percent. [~~evaluation - $67.50.~~]
(h) [~~(e)~~] Physical or [~~,~~] occupational [~~or speech~~] therapy services - Medicare rate plus ten (10) percent. [~~(one (1) hour minimum) per hour - $50.~~]
(i) Speech/language services fees - prevailing market rates in the Kentucky, West Virginia area.
(j) Audiological services - Medicare rate plus ten (10) percent.
(k) Other outpatient therapy per session - $76.
(l) Brain injury program - $600 per day.
(m) Physical restoration - $190 per day.
(n) Dormitory housing - $31 per day.
(o) Medical housing - $200 per day.
(p) Nonresidential meals - state per diem rates.
(3) Fees shall include all administrative costs, reports and follow-ups.

Section 3. Rehabilitation Technology [~~Engineering~~]. (1) Fees for driver evaluation, driver education, home modification and occupational therapy services shall be based on prevailing market rates in the Kentucky, West Virginia area.
(2) For individuals who desire or need driver evaluation, driver training, occupational therapy services or vehicle modification studies by an agency specialist, the following fees shall apply:
(a) Evaluation automobile (five (5) hour minimum) - $50 per hour.

(b) Evaluation van (ten (10) hour minimum) - $50 per hour.

(c) Driver training (one (1) hour minimum) - $50 per hour.

(d) Occupational therapy services (one (1) hour minimum) - $50 per hour.

(3) Fees shall include all administrative costs, reports and follow-up.

Section 4. Fee for Agency Staff Services. [~~(1)~~] A fee of $100 per hour may be charged for agency staff services.

[~~(2) A fee of thirty-six (36) dollars per day shall be charged for vocational adjustment services at agency operated work training centers.~~]

Section 5. The department may negotiate a lesser fee with state/federal programs or a volume discount for private providers.

SAM SERRAGLIO, Commissioner
RODNEY CAIN, Secretary

APPROVED BY AGENCY: April 3, 1996

FILED WITH LRC: April 11, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1996 at 10 a.m. Eastern Time in the DVR Training Room, 209 St. Clair Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by May 25, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing 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: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (502) 564-4440. The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected:

(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, 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. No other service provider offers comprehensive rehabilitation services.

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

1. First year following implementation: Reports sent to purchasers of service will increase.

2. Second and subsequent years: All administrative costs will be included in the fee for service.

(3) Effects on the promulgating administrative body: Fees should reduce agency indirect cost to taxpayers.

(a) Direct and indirect costs or savings:

1. First year: Not known.

2. Continuing costs or savings: Not known.

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

(b) Reporting and paperwork requirements: Reports will be generated when services are provided. Copies will be sent to the referring agencies.

(4) Assessment of anticipated effect on state and local revenues: The fees generated may offset some of the indirect costs associated with maintaining the facility.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees should generate revenue to implement the 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: Better utilization of the facility should result.

(b) Kentucky: Service fees will generate revenues needed for the program without additional costs to the taxpayer.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(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: Not applicable.

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details agency fees for vocational rehabilitation services provided to individuals who do not meet eligibility requirements but who desire and need services.

3. Minimum or uniform standards contained in federal mandate. The federal mandate requires states to adopt policies and procedures necessary for the administration of the program.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. The department can provide services only to individuals eligible under Title I of the Rehabilitation Act using federal funds. Other Kentuckians can be served only a fee for service basis. The fee structure will allow the department to provide available services to individuals who would otherwise not be served.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Amendment)

803 KAR 2:320. 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
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=l 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 is 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 no 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.

(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

areal

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 require 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 imperious 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 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. [~~10.~~] There shall be no connection between regulated areas and any other areas through the ventilation system.

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

11. [~~12.~~] 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 are 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 ares.

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 ares, 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 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 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 suite, 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 t 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~~	~~COMPLIANCE DATES~~		
	~~200 ug/m³~~	~~100 ug/m³~~	~~50 ug/m³~~

~~Primary Lead Production (2) June 29, 1984 June 29, 1991~~
~~Secondary Lead Production (2) June 29, 1984 June 29, 1986~~
~~Lead Acid Battery Manufacture (2) June 29, 1983 June 29, 1986~~
~~Automobile/Manufacture/Solder Grinding (2) N/A June 29, 1988~~
~~Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing (2) N/A June 29, 1982~~
~~Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting (2) N/A N/A~~
~~All Other Industries (2) N/A June 11,1984~~
~~[1]Includes 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 (2) [~~(b)~~] of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) [~~(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 (b) [~~(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 [~~1025(c)(1)(ii), excluding the "Table 1 - Implementation Schedule";~~

~~(b) 29 CFR 1910.1025(c)(2) to 29 CFR~~] 1910.1030(d)(3)(viii); and

(b) [~~(c)~~] 29 CFR 1910.1030(d)(3)(x) through [~~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 1019.1025(c)(1)(ii).~~

~~(3)~~] The language relating to gloves in Section 4(2) [~~paragraph (b)~~] of this subsection shall apply in lieu of 29 CFR 1910 [~~1019~~].1030(d)(3)(ix).

(3) The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 125, June 29, 1995, are incorporated by reference.

(4) 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.

(5) [~~(4)~~] 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.

(6) [~~(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.

MR. JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: April 12, 1996
FILED WITH LRC: April 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 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 May 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

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 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 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 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 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.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Amendment)

803 KAR 2:425. 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

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) This material may be inspected, obtained, 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. (EST), Monday through Friday.

~~[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.]~~

MR. JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 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 May 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

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 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: 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. 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 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.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Amendment)

803 KAR 2:500. 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

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, 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.

[~~(b) 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 Record Services, 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.

MR. JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 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 May 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: 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 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.

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:010. Procedure for adjustments of claims.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.260

NECESSITY AND FUNCTION: KRS 342.260 requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the department, the

administrative law judges, the Workers' Compensation Board and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to regulate practice and procedure before the administrative law judges and the Workers' Compensation Board. This administrative regulation repeals and replaces 803 KAR 25:011.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Commissioner" means the commissioner of the Department of Workers' Claims appointed pursuant to KRS 342.228.

(5) "Date of filing" means the date a pleading, motion, or other document is received by the commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except final orders and opinions of administrative law judges and the board, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion.

(6) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(7) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(8) "Special defenses" means defenses that shall be raised by "special answer" filed within twenty (20) days of the date of the scheduling order, or within ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence. Special defenses are waived if not timely raised. Special defenses which shall be pleaded are defenses arising under:

(a) KRS 342.035(3) unreasonable failure to follow medical advice;

(b) KRS 342.165 failure to comply with safety regulation;

(c) KRS 342.316(6) and 342.335 false statement on employment application;

(d) KRS 342.395 voluntary rejection of KRS Chapter 342;

(e) KRS 342.610(3) voluntary intoxication and self-infliction of injury;

(f) KRS 342.710(5) refusal to accept rehabilitation services; and

(g) Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or any other applicable statute.

Section 2. Parties. (1) The party making the original application for adjustment of claim pursuant to KRS 342.270 shall be designated as "plaintiff" and adverse parties "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any person should refuse to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge may order, upon a proper showing, that a party be joined or dismissed.

(b) The special fund shall be joined as a defendant in accord with the provisions of KRS 342.120, 342.316(10)(b), and 342.1202.

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for adjustment of claim and all other pleadings shall be typewritten, and be submitted upon the printed forms prescribed by the commissioner in this administrative regulation, where applicable.

(2) An application for adjustment of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail. Incomplete applications shall not be filed, and shall be returned to the applicant. If the application is resubmitted in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the commissioner. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall include a certification of service upon other parties in conformity with Rule 5.02, Kentucky Rules of Civil Procedure. After the application has been assigned to an administrative law judge, subsequent pleadings shall include within the style of the claim, and immediately before the claim number, "Before (name), ALJ." Upon consolidated claims, the most recent claim number shall be set forth first. Notices of deposition and physical examination are to be served upon the parties only and shall not be filed with the commissioner.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The movant may file a brief memorandum supporting the motion, and opposing parties may file brief memoranda in reply. Further memoranda (e.g., reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not appearing in evidence, shall be supported by affidavits demonstrating such facts.

(4) Every motion, the grounds of which depend upon the existence of facts which movant contends are shown in the evidence or are admitted by the pleadings, shall make reference to the point in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 and for interlocutory relief pursuant to Section 10 of this administrative regulation, may be considered ten (10) days after the date of filing. A response will be considered if filed prior to the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by plaintiff;

2. An affidavit evidencing the grounds set forth in KRS 342.125;

3. A current medical report showing a change in condition and occupational disability;

4. A copy of the opinion and award or settlement sought to be reopened.

(b) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing. Responses may be served within twenty (20) days of filing the motion to reopen.

(7) Motion for allowance of an attorney's fee shall be made within thirty (30) days following finality of the award or settlement upon which the fee request is based and be served upon the adverse parties and the attorney's client in conformity with Section 3(3) of this administrative regulation. The motion shall set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320. The motion shall be accompanied by affidavit of counsel detailing the services rendered and the time expended, Form 109 as required by KRS 342.320(3), and a copy of the contingency fee contract.

Section 5. (1) Application for adjustment of an Injury Claim Form 101 shall be filed with the following completed documents:

(a) Work history (Form 104);

(b) Medical history (Form 105);

(c) Medical release (Form 106); and

(d) One (1) medical report describing the injury which is the basis of the claim; and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of the legible handwritten notes of a treating physician. Medical reports filed with an application shall not be considered as evidence

unless notice is filed pursuant to Section 14 of this administrative regulation.

(2) Defendants may file answers to the application within twenty (20) days after the date of service. If none are filed, all allegations of the application will be deemed denied. If, however, an answer other than one (1) containing a special defense under Section 1(8) of this administrative regulation is filed, only those allegations which are specifically denied shall be deemed disputed.

(3) Proof-taking and discovery shall proceed pursuant to the scheduling order issued by the commissioner, generally providing sixty (60) days for all parties; thirty (30) days thereafter for defendants only; and, plaintiffs fifteen (15) days thereafter for rebuttal only.

(4) During the pendency of a claim any party obtaining a medical examination or a vocational evaluation shall serve a copy of the report of the examiner or evaluator upon all other parties within thirty (30) days of receipt.

(5) Within thirty (30) days after an application has been filed, the commissioner shall assign the claim to an administrative law judge and schedule the time and place of the prehearing conference. The conference shall be scheduled no earlier than fifteen (15) days after the last day of discovery and proof-time.

Section 6. Application for Adjustment of an Occupational Disease Claim. (1) Form 102 shall be filed with the following completed attachments:

(a) Those items set forth in Section 5(1)(a) through (c) and, additionally;

(b) Two (2) written medical reports supporting the claim in compliance with KRS 342.316(2)(b)1. These reports shall not be considered evidence unless notice is filed pursuant to Section 14 of this administrative regulation.

(2) Upon service of Form 102 and thereafter for sixty (60) days, defendants may depose witnesses and cause the plaintiff to be examined by medical experts. Reports shall be exchanged pursuant to Section 5(4) of this administrative regulation.

(3) Within sixty (60) days after the date of service of Form 102 each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3, or eligibility of the plaintiff for benefits shall be deemed conceded. If a notice of election to resist an application has been timely filed, the commissioner shall assign the case to an administrative law judge and issue a scheduling order in the same manner as under Section 5 of this administrative regulation.

(4) Special defenses as described in Section 1(8) of this administrative regulation shall be pleaded within sixty (60) days after the date of service of Form 102 or within ten (10) days of discovery if discovery could not have been had earlier in the exercise of due diligence.

(5) If a medical report filed with the Form 102 application contains findings of separate physicians relative to x-ray examination, spirometric testing or clinical examination, it shall be considered a single medical report.

Section 7. Application for Retraining Incentive Benefits. (1) Form 103 shall be filed with the completed documents required by Section 5(1)(a) through (c) of this administrative regulation and additionally two (2) x-ray reports complying with KRS 342.316.

(2) Discovery and processing of retraining incentive benefit claims shall proceed as set forth in Section 5(2) through (5) of this administrative regulation.

Section 8. Prehearing Conference. (1) The prehearing conference is an informal procedure. No transcript or recordings of the proceedings shall be made. At the conference parties shall dispose of controversies when possible and define disputed issues. Witness lists, copies of known exhibits, and proposed stipulations shall be exchanged fifteen (15) days before the conference. Lists shall state the name of each proposed witness and summarize the testimony of the witness. Except for good cause shown, persons who were not listed as witnesses shall not present testimony. For medical witnesses, the summary shall include a diagnosis, the physical findings, the results of diagnostic studies supporting the diagnosis, any assessment of functional impairment and a discussion of any restrictions of work activities.

(2) At the prehearing conference, the administrative law judge may limit witnesses and exhibits to be presented at hearing.

(3) The plaintiff and counsel and all other parties, either personally or through counsel, shall attend the prehearing conference. Representatives shall hold authority to resolve issues and make offers of settlement. Under compelling circumstances, the administrative law judge may waive the requirement that the plaintiff personally attend.

(4) Rescheduling or postponement of a prehearing conference shall be sought by motion filed at least fifteen (15) days prior to the scheduled conference.

(5) At the conclusion of the conference, the administrative law judge shall prepare a summary of all contested issues and stipulated matters which shall be signed by parties or counsel. Only the listed contested issues shall be the subject of further proceedings.

(6) Upon motion, the administrative law judge may order additional discovery or proof to be taken between the prehearing conference and the hearing.

(7) The hearing shall be scheduled within sixty (60) days of the prehearing conference.

(8) If the parties agree upon a settlement, a settlement agreement (Form 110) shall be submitted for approval of the administrative law judge and acted upon within ten (10) days.

Section 9. Ombudsman Program. (1) The commissioner may direct on a pilot basis that a mediation conference be held before an ombudsman pursuant to KRS 342.329. Such conferences may be held in advance of, or by agreement of all parties in lieu of, the prehearing conference described above. The timing of discovery and proof may be varied upon "pilot claims" from those time frames otherwise prescribed in these rules. Scheduling orders upon "pilot claims" shall clearly set forth the purpose, time and place of proceedings before the ombudsman and subsequent proceedings before an administrative law judge.

(2) All parties shall promptly comply with information requests from an ombudsman and appear either personally or by counsel at conferences before the ombudsman.

Section 10. Interlocutory Relief. (1) During the pendency of a claim, a party may seek any or all of three (3) forms of interlocutory relief:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(b);

(b) Medical benefits pursuant to KRS 342.020;

(c) Rehabilitation services pursuant to KRS 342.710.

(2) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the issuance of the scheduling order, or within twenty (20) days of the filing of any subsequent motion.

(3) A request for interlocutory relief becomes ripe for decision twenty (20) days after the issuance of the scheduling order where relief has been requested in the Form 101 application. Where request for interlocutory relief has been made by motion, the request becomes ripe twenty (20) days after service of the motion.

(4) Entitlement to interlocutory relief may be shown by means of affidavit, deposition, or other evidence of record demonstrating that movant is eligible under KRS Chapter 342 and will suffer irreparable injury, loss, or damage pending a final decision on the application. Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) When interlocutory relief is awarded in the form of income

benefits the application shall be placed in abeyance, unless a party shows irreparable harm thereby. The administrative law judge may require periodic report as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief may be terminated and the claim removed from abeyance.

(6) Interlocutory relief may not be granted upon a claim for retraining incentive benefits.

(7) An attorney's fee in the amounts authorized by KRS 342.320 but in no event to exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

Section 11. Hearings. (1) At hearing, the parties shall present proof concerning contested issues. If plaintiff fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim may be taken under submission immediately, or briefs may be ordered. Briefs shall not exceed fifteen (15) pages in length. Reply briefs are limited to five (5) pages. Permission to increase the length of a brief may be sought by motion. The administrative law judge may announce his decision at the conclusion of the hearing or defer decision until rendition of a written opinion. In any event, a decision shall be rendered no later than sixty (60) days following hearing. The time for filing a petition for reconsideration or notice of appeal shall not begin to run until the "date of filing" of the written opinion as set forth in Section 1(5) [~~(4)~~] of this administrative regulation.

Section 12. Petitions for Reconsideration. (1) Within fourteen (14) days of the filing of the order, award, or decision as set forth in Section 1(4) of this administrative regulation, a party may petition for reconsideration clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 13. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a final order of an administrative law judge as set forth in Section 1(5) [~~(4)~~] of this administrative regulation any party aggrieved by the order may appeal to the board. As used in this section "final order" shall be determined in accordance with Civil Rule 54.02(1) and (2).

(2) An appeal shall be initiated by the filing of a notice of appeal denoting the appealing party as the "petitioner" and all parties against whom the appeal is taken as "respondents." The administrative law judge who rendered the order appealed from shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be named as a "respondent" pursuant to KRS 342.316(10)(b). The workers' compensation claim number shall be set forth in all pleadings before the board.

(3) Any party other than the petitioner may file a cross-appeal through notice of cross-appeal filed within ten (10) days after notice of appeal is served. The cross-appeal shall designate the parties as appropriate (i.e., petitioner-cross-respondent).

(4) Notice of appeal, cross-appeal and all other pleadings before the board shall be served as provided in Section 3(3) of this administrative regulation. The commissioner shall issue an acknowledgement to all parties of the filing of a direct appeal only.

(5) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2), the board shall immediately schedule a hearing on that issue. All subsequent appeal time in the case shall be calculated from the date the transcript of hearing is filed instead of the date of filing of the notice of appeal.

(6) Petitioner's brief shall be filed within thirty (30) days of filing of the notice of appeal. The organization and contents of the petitioner's brief shall be as provided in Civil Rule 76.12(4)(c) except no index shall be required and the appendix shall only include copies of the decision appealed, petitions for reconsideration, rulings on petitions, and cases cited from federal courts and foreign jurisdictions.

(7) Respondent's brief shall be filed within thirty (30) days of the date petitioner's brief was served. Organization and contents shall be as provided in Civil Rule 76.12(4)(d) except no index shall be required and the appendix shall only include copies of cases cited from federal courts and foreign jurisdictions. If the respondent is also a cross-petitioner, a combined brief shall address issues raised by the cross-appeal.

(8) Failure of a party to timely file a brief is ground for imposition of one (1) or more of the following penalties:

(a) Affirmation or reversal of the final order;

(b) Striking of an untimely brief; or

(c) A fine on counsel of not more than $500.

(9) Petitioner's reply brief may be served within fifteen (15) days after the date on which the last respondent's brief was served or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e), except that no appendix, index, or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall address issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within fifteen (15) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e) except that no appendix, index, or contents page shall be required.

(11) Petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each, reply briefs to five (5) pages, and combined briefs to twenty (20) pages. Permission to increase the length of a brief shall be sought by motion.

(12) All pleadings shall conform to the requirements set forth in Civil Rule 7.02(4) and shall be filed without covers. The style of the case, including the claim number and title of the pleading, shall appear on the first page of the pleading.

(13) The board shall enter its decision affirming, modifying, or setting aside the order appealed from, or, in its discretion may remand the claim to the administrative law judge for further proceedings. Motions for reconsideration are not permitted.

(14) The decision of the board may be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

(15) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of any motion; and, any intermediate order may be issued on the signature of any board member.

Section 14. Medical Reports. (1) A party may introduce direct testimony from a physician through medical report, subject to the limitations of KRS 342.033, Section 5(1)(d) of this administrative regulation, and the scheduling order issued pursuant to Section 5(3) of this administrative regulation.

(2) Medical reports shall be submitted on Form 107 (injury) or Form 108 (occupational disease) as appropriate, except that an administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or the submitting attorney verifying the authenticity of the report.

(4) Medical reports shall include within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the

physician assigned a medical qualifications index number, reference may be made to the physician's index number in lieu of attaching qualifications.

(5) Any narrative in a medical report on a Form 107 or Form 108 shall be typewritten. Other portions of a report, including spirometric tracings, shall be clearly legible.

(6) Upon notice a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if there has been no objection filed. Objection to the filing of a medical report shall be filed within ten (10) days of the notice or the motion for admission. Grounds for the objection shall be stated with particularity. The administrative law judge shall rule on the matter within fifteen (15) days of the filing of a motion or objection, whichever is last filed.

(7) If a medical report is admitted as direct testimony, any adverse party may depose the reporting physician as if on cross-examination at its expense.

Section 15. Extensions of Proof Time. (1) Extensions of time for producing evidence shall not be granted except upon showing of circumstances preventing the party from timely introducing proof. Motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended. The motion or supporting affidavits shall set forth:

(a) The efforts to produce the evidence in a timely manner;

(b) Facts which prevented timely production; and

(c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(2) In the absence of compelling circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(3) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff and to all defendants should an extension be granted to a defendant, and shall extend the time of the adverse party automatically except when the extension is for rebuttal proof.

Section 16. Stipulation of Facts and Judicial Notice. (1) Refusal to stipulate facts which are not genuinely in issue may warrant imposition of sanctions as provided in Section 23 of this administrative regulation. Assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous. Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Coverage - Insured Status. (1) The administrative law judge shall take judicial notice that compliance with KRS Chapter 342 is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the provisions of KRS Chapter 342 pursuant to KRS 342.395 and 342.400.

(2) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should an employer not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 18. Evidence - Rules Applicable. (1) The rules of evidence prescribed by the Supreme Court apply in all proceedings before the administrative law judges, except as varied by specific statute and this administrative regulation.

(2) A nontreating physician is permitted to use the history and the subjective symptomatology related to him by the patient in arriving at and formulating opinions.

Section 19. Discovery and Depositions Wage Certification. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of telephonic deposition must relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party must contribute proportionate costs of the conference call.

(3) The commissioner shall establish a medical qualifications index. An index number will be assigned to a physician upon the filing of the physician's qualifications. Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications. Qualifications may be revised or updated by submitting revisions to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of a physician.

(4) At any time during the pendency of a claim the employee may serve a request upon the employer for verification of earnings during a period of fifty-two (52) weeks preceding a purported injury or at last exposure to occupational disease. Within thirty (30) days of service of a verification request, a representative of the employer shall complete and serve a completed Form AWW-1 on all other parties.

Section 20. Appearances. (1) Only attorneys duly licensed in Kentucky may practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself.

(2) Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as an attorney.

Section 21. Withdrawal of Records. (1) No portion of any original record of the department shall be withdrawn except on order of the commissioner, an administrative law judge, or a member of the board.

(2) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final. A party filing an exhibit may make arrangements to claim an exhibit prior to that time. If an unclaimed exhibit has no money value, it shall be destroyed; if an unclaimed exhibit has a value of more than $100, it shall be sold as surplus property; if an unclaimed exhibit has a value of less than $100, it shall be donated to an appropriate state agency; and, if an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 22. Routine Records Admission. Any party may file in the record of a case any properly authenticated hospital, armed forces or Social Security records. However, opinions of physicians which may be expressed in such records shall not be considered by the administrative law judge in violation of the rule relative to the number of physician's opinions set forth in KRS 342.033.

Section 23. Sanctions. Pursuant to KRS 342.310, an administrative law judge and the board may assess costs upon determination that proceedings have been brought, prosecuted or defended without reasonable grounds. Whenever justice will be served penalties shall be assessed against an offending attorney rather than against the client the attorney represents. Where a party is a governmental agency and attorney's fees are assessed, such fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of like services had a private attorney been retained. Failure of a party to timely file any pleading required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 24. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation shall be made only after the claimant, or any other party in interest, has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The claimant may by motion and affidavit demonstrating compliance with the requirement of subsection (1) of this section, request an administrative law judge to order payment from the uninsured employers' fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the special fund.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from an uninsured employer upon a showing that the employer has filed a petition under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section 25. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guideline. Age is to be determined as of the date of the evaluation. Height is to be measured while the claimant stands in his stocking feet and shall be rounded to the nearest centimeter.

(2) Formulas established by the Guidelines for predicted normal FVC and FEV1, shall be applied and predicted values computed. For example, the formula applicable to men for FVC and FEV1 as set forth in the Fourth Edition of the Guides are:

FVC in liters equals 0.06 times H minus 0.0214 times A minus 4.650 [~~– 0.0244 times A minus 2.19~~].

FEV1 in liters equals 0.0414 times H minus [-] 0.0244 times A minus 2.19.

H is height in centimeters.

A is age in years.

(3) The plaintiff's height, as measured in his stocking feet, shall be rounded out to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

Section 26. Forms. (1) Incorporation by reference. One (1) copy of Forms 101 (rev. 1/1/96), 102 (5/8/96), 103 (1/1/92), 104 (rev. 1/1/96), 105 (rev. 1/1/96), 106 (rev. 1/1/96), 107-I (rev. 5/8/96), 107-P (rev. 5/8/96), 108 (rev. 5/8/95), 109 (3/15/95), 110-I (rev. 7/1/95), 110-O (rev. 7/1/95), 110-R (rev. 7/1/95), and AWW-1 (rev. 5/8/95) is filed herewith and incorporated by reference.

(2) Obtaining forms.

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., local time, Monday through Friday, inclusive, for this purpose.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: April 12, 1996

FILED WITH LRC: April 12, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing will be held at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, 10 p.m., on May 29, 1996. Individuals interested in attending this hearing shall notify this agency in writing by May 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This administrative regulation will affect the parties to contested workers' compensation claims. Employer, employees, insurers, the Special Fund, the Uninsured Employers' Fund, and attorneys representing these persons or entities will be affected. Over 8,000 contested workers' compensation claims are filed with the Department of Workers' Claims each year.

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

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

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

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

1. First year following implementation: The forms used in the practice of workers' compensation cases have been revised, but otherwise the compliance, reporting, and paperwork requirements remain essentially the same.

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: Some additional costs will be incurred for the initial printing of new forms: this cost is not expected to exceed $10,000.

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: Little or no change in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and

enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(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 throughout the state of Kentucky, and is not expected to have an economic impact different from that of the present regulation.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected. It is believed that the revised forms will simplify and expedite proceedings in workers' compensation cases.

(8) Assessment of expected benefits:

(a) Effect on public health and environment: No effect.

(b) Detrimental effect on environment and public health if not implemented. No effect.

(c) Explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize proposed administrative regulation with conflicting provisions: Not applicable.

(10) Additional information or comments: None

(11) Tiering: Is tiering applied? No. Tiering is not appropriate since multiple classes are not involved. This proposed amended regulation applies equally to all litigants before Administrative Law Judges and the Workers' Compensation Board.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Amendment)

806 KAR 17:066. Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500 to 304.14-550, 304.17-305, 304.17-318, 304.18-036, 304.18-095, 304.32-157, 304.32-165, 304.32-270, 304.38-193, 304.38-196, 304.38-200

STATUTORY AUTHORITY: KRS 304.2-110, 304.14.510, 304.32-250, 304.38-150

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 provides that the Commissioner of Insurance may make reasonable administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 provides that the Commissioner of Insurance may make reasonable administrative regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for Medicare supplement insurance policies.

Section 1. Definitions. [~~For the purposes of this administrative regulation:~~]

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means any certificate delivered to or issued under a group Medicare supplement policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(4) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(5) "Insurance policy" means an insurance policy; [,] a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation; [,] and an enrollee contract issued by a health maintenance organization.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement polices or certificates.

(7) "Medicare" means the "Health Insurance for the Aged Act," "Title XVIII of the Social Security Amendments of 1965," as then constituted or later amended (42 USC 1395 et seq.).

(8) "Medicare supplement policy" means a group or individual policy of insurance[,] a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation[,] or an enrollee contract issued by a health maintenance organization, other than a policy issued pursuant to a contract under Section 1876 [~~or Section 1833~~] of the federal Social Security Act (42 USC Section 1395 et.seq.) or an issued policy under a demonstration project specified in 42 USC 1395ss(g)(1) [~~authorized pursuant to amendments to the federal Social Security Act~~], which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Section 2. Purpose, Applicability, and Scope. (1) The purpose of this administrative regulation is to provide for the reasonable standardization of coverages and simplification of terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of such policies, to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverages to persons eligible for Medicare.

(2) Except as otherwise specifically provided in Sections 11 and 12 of this administrative regulation, this administrative regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this administrative regulation; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

(3) This administrative regulation shall not apply to a policy or contract of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 3. Policy Definitions and Terms. A [~~No~~] policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless the policy or certificate contains terms or definitions which conform to those in this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental

bodily injury sustained by the insured [~~injured~~] person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) Such definition may provide that injuries [~~injury~~] shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless such a definition is prohibited by law.

(2) "Benefit period," or "Medicare benefit period," shall not be defined as more restrictive than as that defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

(4) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(a) These expenses shall not include:

1. Home office and overhead costs;
2. Advertising costs;
3. Commissions and other costs of acquiring insurance business;
4. Taxes;
5. Capital costs;
6. Administrative costs; and
7. Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare program.

(6) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or Title I, Part I of P.L. 89-97, as enacted by the 89th Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof, or words of similar import.

(7) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

(8) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(9) "Sickness" shall not be defined to be more restrictive than the following: "sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, or employer's liability, or similar law.

Section 4. Policy Provisions. (1) Except for permitted preexisting condition clauses as described in Sections 5(1)(a) and 6(1)(a) of this administrative regulation, a [~~no~~] policy or certificate shall not [~~may~~] be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the [~~such~~] policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy shall not contain a probationary or elimination period.

(3) A Medicare supplement policy or certificate shall not use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(4) A [~~No~~] Medicare supplement insurance policy in force in this state shall not contain benefits which duplicate benefits provided by Medicare.

Section 5. Minimum Benefit Standards. (1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate if it does not meet or exceed the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with these standards. This section applies to Medicare supplement policies issued prior to January 1, 1992.

(2) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with these changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(e)1. Except as authorized by the commissioner, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subparagraph 4 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

a. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 6(2) of this administrative regulation.

3. If membership in the group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2 of this paragraph; or

b. Offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the [~~succeeding~~] issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the

policy benefit period, if any, or to payment of the maximum benefits.

(3) Minimum benefit standards.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B; and

(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out of pocket amount equal to the Medicare Part B deductible maximum benefit.

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Section 6. Benefit Standards for Policies or Certificates Issued or Delivered on or after January 1, 1992. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents, and shall not contain a probationary or elimination period.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost-sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable; and

1. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

2. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5 of this paragraph, the issuer shall offer certificate holders an individual Medicare supplement policy which (at the option of the certificate holder):

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits which otherwise meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer continuation and conversion coverages in accordance with subparagraph 3 of this paragraph.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the [~~succeeding~~] issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to [~~or~~] any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(g)1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance. [~~Upon receipt of timely notice, the issuer shall return to the policyholder or certificate holder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.~~]

2. If the suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of the entitlement to medical assistance) as of the termination of the entitlement if the policyholder or certificate holder provides notice of loss of the entitlement within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of the entitlement.

3. Reinstitution of coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Standards for basic ("core") benefits common to all benefit plans. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package, but not in lieu thereof.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each

Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; and

(e) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans "B" through "J" only as provided by Section 7 of this administrative regulation.

(a) Medicare Part A deductible: coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled nursing facility care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B deductible: coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(d) Eighty (80) percent of the Medicare Part B excess charges: coverage for eighty (80) percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(f) Basic outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(g) Extended outpatient prescription drug benefit: coverage for fifty (50) percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(h) Medically necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: coverage for the following preventive health services:

1. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2 of this paragraph and patient education to address preventive health care measures.

2. Any one (1) or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

a. Fecal occult blood test and/or digital rectal examination;

b. Mammogram;

c. Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

d. Pure tone (air only) hearing screening test, administered or ordered by a physician;

e. Serum cholesterol screening (every five (5) years);

f. Thyroid function test; or

g. Diabetes screening.

3. Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster (every ten (10) years).

4. Any other tests or preventive measure determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-home recovery benefit: coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

1. For purposes of this benefit, the following definitions shall apply:

a. "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

b. "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

c. "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

d. "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

2. Coverage requirements and limitations:

a. At-home recovery services provided shall [~~must~~] be primarily services which assist in activities of daily living.

b. The insured's attending physician shall [~~must~~] certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage is limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit.

(iii) $1,600 per calendar year.

(iv) Seven (7) visits in any one (1) week.

(v) Care furnished on a visiting basis in the insured's home.

(vi) Services provided by a care provider as defined in this section.

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

3. Coverage is excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(k) New or innovative benefits: an issuer may, with the prior approval of the commissioner, offer polices or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. New or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of a simplification of Medicare supplement policies.

Section 7. Standard Medicare Supplement Benefit Plans. (1) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 6(2) of this administrative regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in Sections 6(3)(k) and 8 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit Plans "A" through "J" listed in this subsection and conform to the definitions in Section 8 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Section 6(2) and (3) of this administrative regulation and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in Section 6(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible as defined in Section 6(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), and (h) of this administrative regulation, respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (h), and (j) of this administrative regulation, respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in Section 6(3)(a), (b), (h), and (i) of this administrative regulation, respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (c), (e), and (h) of this administrative regulation, respectively.

(g) Standardized Medicare supplement benefit Plan "G" shall include only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Section 6(3)(a), (b), (d), (h), and (j) of this administrative regulation, respectively.

(h) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in Section 6(3)(a), (b), (f), and (h) of this administrative regulation, respectively.

(i) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in Section 6(3)(a), (b), (e), (f), (h), and (j) of this administrative regulation, respectively.

(j) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: the core benefit as defined in Section 6(2) of this administrative regulation, plus the Medicare part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in Section 6(3)(a), (b), (c), (e), (g), (h), (i), and (j) of this administrative regulation, respectively.

Section 8. Medicare Select Policies and Certificates. (1)(a) This section shall apply to Medicare select policies and certificates, as defined in this section.

(b) A [~~No~~] policy or certificate shall not [~~may~~] be advertised as a Medicare select policy or certificate unless it meets the requirements of this section.

(2) For the purpose of this section:

(a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare select issuer or its network providers.

(b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare select issuer or its network providers.

(c) "Medicare select issuer" means an issuer offering, or seeking to offer, a Medicare select policy or certificate.

(d) "Medicare select policy" or "Medicare select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(e) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare select policy.

(f) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(g) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare select policy.

(3) The commissioner may authorize an issuer to offer a Medicare select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) (42 USC 1395ss) of 1990, if the commissioner finds that the issuer has satisfied all of

the requirements of this administrative regulation.

(4) A Medicare select issuer shall not issue a Medicare select policy or certificate in this state until its plan of operation has been approved by the commissioner.

(5) A Medicare select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with paragraph (9) of this subsection.

(g) Any other information requested by the commissioner.

(6)(a) A Medicare select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing any changes. Any changes shall be considered approved by the commissioner thirty (30) days after filing unless specifically disapproved by the commissioner.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(7) A Medicare select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(b) It is not reasonable to obtain these services through a network provider.

(8) A Medicare select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(9) A Medicare select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the issuer; and

2. Other Medicare select policies or certificates.

(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare select issuer's quality assurance program and grievance procedure.

(10) Prior to the sale of a Medicare select policy or certificate, a Medicare select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (9) of this section and that the applicant understands the restrictions of the Medicare select policy or certificate.

(11) A Medicare select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. These procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(12) At the time of initial purchase, a Medicare select issuer shall make available to each applicant for a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(13)(a) At the request of an individual insured under a Medicare select policy or certificate, a Medicare select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make these policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for six (6) months.

(b) For the purpose of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not

included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(14) Medicare select policies and certificates shall provide for continuation of coverage in the event the Secretary of the United States Department of Health and Human Services determines that Medicare select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare select program to be reauthorized under law or its substantial amendment.

(a) Each Medicare select issuer shall make available to each individual insured under a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(15) A Medicare select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare select program.

Section 9. Open Enrollment. (1) An [~~No~~] issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a Medicare supplement policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of [~~where~~] an application for a [~~such~~] policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual [~~(who~~] is sixty-five (65) years of age or older and is [~~) first~~] enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2) Except as provided in Section 21 [~~Subsection~~] (1) of this administrative regulation [~~section~~] shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage [~~it~~] became effective.

Section 10. Standards for Claims Payment. (1) An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, PL No. 100-203) (42 USC 1395ss) by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier directly;

(d) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(f) Providing to the Secretary of the United States Department of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(2) Compliance with the requirements set forth in subsection (1) of this section shall be certified on the Medicare Supplement Insurance Experience Reporting Form.

Section 11. Loss Ratio Standards and Refund or Credit of Premium. (1) Loss ratio standards.

(a)1. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

a. [~~1.~~] At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

b. [~~2.~~] At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies;

2. Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(b) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For purposes of applying subsection (1)(a) of this section and Section 12(3)(c) of this administrative regulation only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(d) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

2. The appropriate loss ratio requirement from subsection (1)(a)1a and b of this section when combined with actual experience beginning with (insert effective date of this revision) to date; and

3. The appropriate loss ratio requirement from subsection (1)(a)1a and b of this section over the entire future period for which the rates are computed to provide coverage.

(2) Refund or credit calculation.

(a) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund of credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For the purposes of this section, policies or certificates issued prior to October 14, 1990, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after this amendment to the administrative regulation is adopted and

effective pursuant to KRS Chapter 13A. The first report containing the information found in this paragraph shall be due May 31, 1998.

(d) [~~(c)~~] A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of the United States Department of Health and Human Services, but shall not be less than the average rate of interest for thirteen (13) week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of premium rates. An issuer of Medicare supplement policies and certificates issued before or after January 1, 1992, in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(a) As soon as practicable prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in Kentucky shall file with the commissioner, in accordance with applicable filing procedures:

1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable Medicare supplement policies or certificates. Supporting documents as necessary to justify the adjustment shall accompany the filing.

2. An issuer shall make premium adjustments as are necessary to produce an expected loss ratio under the policies and certificates as will conform to the minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for Medicare supplement policies or certificates. A [~~No~~] premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection shall not [~~should~~] be made with respect to a policy at any time other than upon its renewal date or anniversary date.

3. If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner [~~he~~] may order premium adjustments, refunds, or premium credit deemed necessary to achieve the loss ratios required by this section.

(b) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. These riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement insurance benefits provided by the Medicare supplement policy or certificate.

(4) Public hearings. The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS Chapter 304.2.

Section 12. Filing and Approval of Policies and Certificates and Premium Rates. (1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

(2) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

(3)(a) Except as provided in paragraph (b) of this subsection, an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;

2. The addition of either direct response or agent marketing methods;

3. The addition of either guaranteed issue or underwritten coverage; and

4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(4)(a) Except as provided in subparagraph 1 of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

1. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

2. An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1 of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the issuer complies with the following requirements:

1. The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing [~~resultant~~] rates; and

2. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

(5)(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 11 of this administrative regulation.

(b) Forms assumed under an assumption reinsurance agreement

shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Section 13. Permitted Compensation Arrangements. (1) An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall [~~must~~] be the same as that provided in the second year or period and shall be provided for not less than five (5) years.

(3) An [~~No~~] issuer or other entity shall not provide compensation to its agents or other producers and an [~~no~~] agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced [~~unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy~~].

(4) For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including, but not limited to, bonuses, gifts, prizes, awards, and finders' fees.

Section 14. Required Disclosure Provisions. (1) General rules.

(a) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision shall [~~must~~] be consistent with the type of insurance policy issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases on the insured's age.

(b) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations."

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within at least thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(f)1. Issuers of insurance policies and certificates thereunder covering accident and sickness and hospital or medical expenses on an expense incurred or indemnity basis[~~, other than incidentally,~~] to persons eligible for Medicare [~~by reason of age~~] shall provide to these applicants a Guide to Health Insurance for People with Medicare [~~supplement buyer's guide~~] in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than twelve (12) point type. Delivery of the [~~buyer's~~] guide shall be made whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this administrative regulation. Delivery of the [~~buyer's~~] guide shall be made to the applicant at the time of application and acknowledgment of receipt of the [~~buyer's~~] guide shall be obtained by the issuer, except that direct response issuers shall deliver the [~~buyer's~~] guide to the applicant upon request, but not later than the time the policy is delivered.

2. For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its insureds of modifications it has made to Medicare supplement policies or certificates. The notice shall be in a format acceptable to the commissioner. The notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or certificate; and

2. Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any solicitation.

(3) Outline of coverage requirements for Medicare supplement policies.

(a) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response issuers, shall obtain an acknowledgment of receipt of the outline from the applicant.

(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the issuer's name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this subsection consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All Plans A-J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(d) The following items shall be included in the outline of coverage in the order prescribed below:

(COMPANY NAME)
Outline of Medicare Supplement Coverage - Cover Page:
Benefit Plan(s)__ (Insert letter(s) of plan(s) being offered)

Medicare supplement insurance can be sold in only ten standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

BASIC BENEFITS: Included in all plans.
Hospitalization: Part B coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical expenses: Part B coinsurance (20% of Medicare-approved expenses).
Blood: First three pints of blood each year.

A	B	C	D	E	F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Coinsur-ance	Skilled Nursing Coinsur-ance	Skilled Nursing Coinsur-ance	Skilled Nursing Coinsur-ance	Skilled Nursing Coinsur-ance	Skilled Nursing Coinsur-ance	Skilled Nursing Coinsur-ance	Skilled Nursing Coinsur ance
	Part A Deduct-ible	Part A Deduct-ible	Part A Deduct-ible	Part A Deduct-ible	Part A Deduct-ible	Part A Deduct-ible	Part A Deduct-ible	Part A Deduct-ible	Part A Deduct-ible
		Part B Deduct-ible			Part B Deduct-ible				Part B Deduct-ible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-home Recovery			At-home Recovery		At-home Recovery	At-home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Prevent-ive Care					Prevent-ive Care

1. PREMIUM INFORMATION (Boldface Type)
We (insert issuer's name) can only raise your premium if we raise the premium for all policies like yours in this state. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change).

DISCLOSURES (Boldface Type)
Use this outline to compare benefits and premiums among policies.

2. READ YOUR POLICY VERY CAREFULLY (Boldface Type)
This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

3. RIGHT TO RETURN POLICY (Boldface Type)
If you find that you are not satisfied with your policy, you may return it to (insert issuer's address). If you send the policy back to us within thirty (30) days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

4. POLICY REPLACEMENT (Boldface Type)
If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you

want to keep it.

5. NOTICE (Boldface Type)

This policy may not fully cover all of your medical costs.

a. (for agents)
Neither (insert insurer's name) nor its agents are connected with Medicare.

b. (for direct response insurers:)
(insert insurer's name) is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for more details.

6. COMPLETE ANSWERS ARE VERY IMPORTANT
(Boldface Type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been recorded properly.

(Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments, and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. More than four (4) plans shall not be shown on one (1) chart. For purposes of illustration, charts for each plan are included in this administrative regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 7(4) of this administrative regulation.)

(Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.)

PLAN A

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716 [~~628~~]	$0	$716 [~~628~~] (Part A deductible)
61st thru 90th day	All but $179 [~~157~~] a day	$179 [~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358 [~~314~~] a day	$358 [~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare Eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50 [~~78.50~~] a day	$0	Up to $89.50[~~78.50~~] a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN A

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs

SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	$0	Up to $89.50[~~78.50~~] a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN B
MEDICARE (PART A) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equip-ment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES		100%	$0$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN C
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN C
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES- BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN C
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN D
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD First 3 pints	$0	3 pints	$0

Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN D
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES: IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equip-ment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0
PARTS A & B			
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
- First $250 each calendar year	$0	$0	$250
- Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN E
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN E
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services,			

inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN E
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
PREVENTIVE MEDICAL CARE BENEFIT-NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

PLAN F
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and in-patient respite care	$0	Balance

PLAN F
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equip-ment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare-approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES -			

BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN F

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
- First $250 each calendar year	$0	$0	$250
- Remainder of charges	$0	80% to a life-time maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD First 3 pints	$0	3 pints	$0

Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN G

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	80%	20%
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved	

		visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
- First $250 each calendar year	$0	$0	$250
- Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN H
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN H
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	0% [~~80%~~]	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0

PLAN H
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% - $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN I
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and

have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN I
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare-approved amounts	80%	20%	$0

CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$0	$100 (Part B deductible)
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% - $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing			

and miscellaneous services and supplies			
First 60 days	All but $716[~~628~~]	$716[~~628~~] (Part A deductible)	$0
61st thru 90th day	All but $179[~~157~~] a day	$179[~~157~~] a day	$0
91st day and after:			
- While using 60 lifetime reserve days	All but $358[~~314~~] a day	$358[~~314~~] a day	$0
- Once lifetime reserve days are used:			
- Additional 365 days	$0	100% of Medicare eligible expenses	$0
- Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $89.50[~~78.50~~] a day	Up to $89.50[~~78.50~~] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	generally 80%	generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare-approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES-BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE

MEDICARE APPROVED SERVICES			
- Medically necessary skilled care services and medical supplies	100%	$0	$0
- Durable medical equipment			
- First $100 of Medicare-approved amounts*	$0	$100 (Part B deductible)	$0
- Remainder of Medicare-approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
- Benefit for each visit	$0	Actual charges to $40 a visit	Balance
- Number of visits covered (must be received within 8 weeks of last Medicare-approved visit)	$0	Up to the # of Medicare-approved visits, not to exceed 7 each week	
- Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	50% - $3,000 calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All costs
PREVENTIVE MEDICAL CARE BENEFIT NOT COVERED BY MEDICARE			
Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

(4) Notice regarding policies or certificates which are not Medicare supplement policies.

(a) Any accident or sickness insurance policy or certificate (other than a Medicare supplement policy), a policy issued pursuant to a contract under Section 1876 [~~or Section 1833~~] of the Federal Social Security Act (42 USC §1395 et seq.), disability income policy, [~~basic, catastrophic, or major medical expense policy, or single premium nonrenewable policy,~~] or other policy identified in Section 2(3) of this administrative regulation issued for delivery in Kentucky to persons eligible for Medicare [~~by reason of age~~] shall notify insureds under the [~~such~~] policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed on or attached to the first

page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the [~~Medicare supplement buyer's~~] Guide to Health Insurance for People with Medicare available from the insurance company."

(b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in paragraph (a) of this subsection shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 15. Requirements for Application Forms and Replacement Coverage. (1) Comparison statement. When a Medicare supplement policy or certificate is to replace another health insurance policy or certificate, there shall be presented to the applicant, no later than at the time of taking the application, a comparison statement which shall be substantially identical to Appendix C. Direct response issuers shall present the comparison statement to the applicant not later than at the time of delivery of the policy. Agents shall obtain the signature of the applicant on the comparison statement and shall sign the comparison statement and send the comparison statement to the issuer. A copy of the comparison statement shall be attached to the replacement policy.

(2) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent containing these questions and statements may be used:

(a) Statements.

1. You do not need more than one (1) Medicare supplement policy.

2. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

3. [~~If you are sixty-five (65) or older,~~] You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

4. [~~3.~~] The benefits and premiums under your Medicare supplement policy can [~~will~~] be suspended, if requested during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within ninety (90) days of losing Medicaid eligibility.

5. [~~4.~~] Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid Program including benefits as a qualified Medicare beneficiary (QMB) and a specified low-income Medicare beneficiary (SLMB).

(b) Questions. To the best of your knowledge:

1. Do you have another Medicare supplement policy or certificate in force?

a. If so, with which company?

b. If so, do you intend to replace your current Medicare supplement policy with this policy or certificate?

2. Do you have any other health insurance coverage [~~policies~~] that provides benefits similar to [~~which~~] this Medicare supplement policy [~~would duplicate~~]?

a. If so, with which company?

b. What kind of policy?

3. [~~If the answer to (a) or (b) is yes, do you intend to replace these health policies with this policy (or certificate)?~~

~~4.~~] Are you covered for medical assistance through the state [~~by~~] Medicaid Program:

a. As a specified low-income Medicare beneficiary (SLMB)?

b. As a qualified Medicare beneficiary (QMB)?

c. For other Medicaid medical benefits?

(3) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the last five (5) years which are no longer in force.

(4) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, an issuer (other than a direct response issuer), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except where coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(6) The notice required by subsection (5) of this section for an issuer shall be provided in substantially the following form in no less than twelve (12) [~~ten (10)~~] point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
(Insurer Name and Address)
SAVE THIS NOTICE! IT MAY BE IMPORTANT
TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to terminate existing health [~~accident and sickness~~] insurance and replace it with a policy to be issued by (insurer name). Your new policy provides (insert here an amount of time not less than thirty (30) days) within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all health insurance you now have. [~~Terminate your present policy only~~] If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other health coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER OR AGENT (OR OTHER REPRESENTATIVE):

I have reviewed your current health insurance coverage. [~~The replacement of insurance involved in this transaction does not duplicate coverage.~~] To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intent to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason(s) (check one):

___ Additional benefits.

___ No change in benefits, but lower premiums.

___ Fewer benefits and lower premiums.

___ Other (please specify).

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for

benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been recorded properly. (If the policy or certificate is guaranteed issue, this paragraph need not appear).

(d) Do not cancel your present policy until you have your new policy and are sure that you want to keep it.

_____

Signature of Agent or Other Representative

_____

Typed Name and Address of Agent

The above "Notice to Applicant" was delivered to me on:

_____

Date

_____

Applicant's Signature

(6) Subsection (5)(a) and (b) of this section may be omitted from the replacement notice if the replacement policy or certificate does not involve application of a new preexisting condition limitation.

Section 16. Filing Requirements for Advertising of Medicare Supplement Policies. (1) An issuer shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written, radio, or television, to the commissioner prior to such use. Advertisements need not be approved prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the issuer.

(2) Issuers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Issuers and agents shall not use such "leads" if the solicitation materials have been disapproved by the commissioner.

Section 17. Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or issuer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the issuer.

Section 18. Standards for Marketing. (1) An issuer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS Chapter 304.12 and 806 KAR Chapter 12, the following acts and practices are prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare supplement", "Medigap", "Medicare Wrap-Around", and words of similar import shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 19. Appropriateness of Recommended Purchase and Excessive Insurance. (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of recommended purchase or replacement.

(2) Any sale of medicare supplement coverage that will provide an individual more than one (1) Medicare supplement policy or certificate is prohibited.

Section 20. Reporting of Multiple Policies. (1) On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one (1) Medicare supplement insurance policy or certificate:

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth above shall be grouped by individual policyholder.

Section 21. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates. (1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

APPENDIX A

MEDICARE SUPPLEMENT REFUND CALCULATION FORM

FOR CALENDAR YEAR_____

TYPE 1_____SMSBP 2 [~~(A)~~] _____

For the State of_____
Company Name_____
NAIC Group Code_____NAIC Company Code_____
Person Completing This Exhibit_____
Title_____Telephone Number_____

Line	(a) Earned Premium 3 [(x)]	(b) Incurred Claims 4 [(y)]
1. Current year's experience		
a. Total (all policy years)		
b. Current year's issues 5 [(2)]		
c. Net (for reporting purposes = 1a - 1b)	-----	-----
2. Past year's experience (all policy years)	-----	-----
3. Total experience (net current year + past years' experience)	-----	-----
4. Refunds last year (excluding interest)		
5. Previous since inception (excluding interest)		
6. Refunds since inception (excluding interest)		
7. Benchmark ratio since inception (SEE WORK-SHEET FOR RATIO 1)		
8. Experienced ratio since inception		

Total actual incurred claims (line 3, col b) = Ratio 2

Tot. earned prem. (line 3, col a) - refunds since inception (line 6)

9. Life years exposed since inception_____

If the experienced ratio is less than the benchmark ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

10. Tolerance permitted (obtained from credibility table)_____
11. Adjustment to incurred claims for credibility

ratio 3 = ratio 2 + tolerance

If ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.

If ratio 3 is less than the benchmark ratio, then proceed.

12. Adjusted incurred claims =
(tot. earned premiums (line 3, col a) - refunds since inception (line 6)) x ratio 3 (lines 11)

13. Refund = total earned premium (line 3, col a) - refunds since inception (line 6) -
Adjusted incurred claims (line 12)
---
benchmark ratio (ratio 1)

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%

If less than 500, no credibility.

1. Individual, group, individual Medicare select, or group Medicare select only.
2. [(w)] "SMSBP" = Standardized Medicare Supplement Benefit Plan - use "p" for prestandardized plans.
3. [(x)] Includes model loadings and fees charged.
4. [(y)] Excludes active life reserves.
5. [(z)] This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name - Please Type

_____
Title

_____
Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR INDIVIDUAL POLICIES
FOR CALENDAR YEAR_____
TYPE 1_____SMSBP 2[(P)]_____
FOR THE STATE OF_____
Company Name_____
NAIC Group Code_____ NAIC Company Code_____
Address_____
Person Completing this Exhibit_____
Title _____ Telephone Number_____

(a)3 Year	(b)4 Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o)5 Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.4

2	4.175	0.493	0.000	0.000	0.55
3	4.175	0.493	1.194	0.659	0.65
4	4.175	0.493	2.245	0.669	0.67
5	4.175	0.493	3.170	0.678	0.69
6	4.175	0.493	3.998	0.686	0.71
7	4.175	0.493	4.754	0.695	0.73
8	4.175	0.493	5.445	0.702	0.75
9	4.175	0.493	6.075	0.708	0.76
10	4.175	0.493	6.650	0.713	0.76
11	4.175	0.493	7.176	0.717	0.76
12	4.175	0.493	7.655	0.720	0.77
13	4.175	0.493	8.093	0.723	0.77
14	4.175	0.493	8.493	0.725	0.77
15	4.175	0.493	8.684	0.725	0.77
	---	---	---	---	---
TOTAL:	(k):	(l):	(m):	(n):	

Benchmark ratio since inception: (l + n) / (k + m):

1.: Individual, group, individual Medicare select, or group Medicare select only.

2.: "SMSBP" = standardized Medicare supplement benefit plan - use "p" for prestandardized plans.

3.[~~(a)~~]: Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2
(etc.)
(Example: If the current year is 1991, then: year 1 is 1990; year 2 is 1989; etc.)

4.[~~(b)~~]: For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

5. [~~(c)~~]: Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

[~~(p): "SMSBP" = Standardized Medicare Supplement~~]
[~~Benefit Plan.~~]

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO
SINCE INCEPTION FOR GROUP POLICIES
FOR CALENDAR YEAR_____
TYPE 1_____SMSBP 2[~~(P)~~]_____
FOR THE STATE OF_____
Company Name_____
NAIC Group Code_____ NAIC Company Code_____
Address_____
Person Completing this Exhibit_____
Title _____ Telephone Number_____

(a)3 Year	(b)4 Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss Ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss Ratio	(j) (h)x(i)	(o)5 Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89

TOTAL:	(k):	(l):	(m):	(n):

Benchmark ratio since inception: (l + n) / (k + m):

1.: Individual group, individual Medicare select, or group Medicare select only.

2.: "SMSBP" = standardized Medicare supplement benefit plan - use "p" for prestandardized plans.

3.[~~(a)~~]: Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2
(etc.)
(Example: If the current year is 1991, then: year 1 is 1990; year 2 is 1989; etc.)

4.[~~(b)~~]: For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

5.[~~(c)~~]: Those loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

[~~(p): "SMSBP" = Standardized Medicare Supplement~~]
[~~Benefit Plan.~~]

APPENDIX B
FORM FOR REPORTING
MEDICARE SUPPLEMENT POLICIES

Company Name: _____
Address: _____
Phone Number: _____
Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate # Date of Issuance

_____

Signature _____

Name and Title (Please Type) _____

Date _____

KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

Current Insurance_____(Insurer Name) Annual Premium_____

Proposed Insurance_____(Insurer Name) Annual Premium_____

	MEDICARE (PART A): HOSPITAL INSURANCE - COVERED SERVICES PER BENEFIT PERIOD (1)			PRIVATE INSURANCE CHECKLIST	
Services	Benefit	Medicare Pays*	You Pay*	Current Insurance Pays (Plan)** (Plan)**	Proposed Insurance Pays (Plan) (Plan)
HOSPITALIZATION Semiprivate room and board, general nursing and miscellaneous hospital services and supplies.	First 60 days	All but $	$		
	61st to 90th day	All but $ a day	$ a day		
	91st to 150th day***	All but $ a day	$ a day		
	Beyond 150 days	Nothing	All costs		

POSTHOSPITAL SKILLED NURSING FACILITY CARE In a facility approved by Medicare. You must have been in a hospital for at least 3 days and enter the facility within 30 days after hospital discharge (2).	First 20 days	100% of approved amount	Nothing
	Additional 80 days	All but $ a day	$ a day
	Beyond 100 days	Nothing	All costs
HOME HEALTH CARE	Visits limited to medically necessary skilled care.	Full cost of services; 80% of approved amount for durable medical equipment	Nothing for services; 20% of approved amount for durable medical equipment
HOSPICE CARE Available to terminally ill.	Up to days if doctor certifies need.	All but limited costs for outpatient drugs and inpatient respite care.	Limited cost sharing for outpatient drugs and inpatient respite care.
BLOOD	Blood.	All but first 3 pints	For first 3 pints.****
FOREIGN TRAVEL	Medically necessary emergency care in a foreign country.	Emergency hospital services in qualified Mexican or or Canadian hospitals.*****	All costs not covered by Medicare

* These figures are for 19___ and are subject to change each year.
** If the policy being replaced is not a standardized policy, insert "N/A" after "Plan" and complete this column.
*** 60 reserve days may be used only once; days used are not renewable.
**** To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
***** Please refer to your Medicare Handbook for more information.
(1) A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital or skilled nursing facility for 60 days in a row.
(2) Medicare and private Medicare supplement insurance will not pay for most nursing home care. You pay for custodial care and most care in a nursing home.

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APPENDIX C
KENTUCKY MEDICARE SUPPLEMENT COMPARISON STATEMENT

	MEDICARE (PART B): HOSPITAL INSURANCE - COVERED SERVICES PER CALENDAR PERIOD			PRIVATE INSURANCE CHECKLIST	
Service	Benefit	Medicare Pays	You Pay	Current Insurance Pays (Plan)*	Proposed Insurance Pays (Plan)
MEDICAL EXPENSE Physician's services, inpatient and outpatient medical services and supplies, physical and speech therapy, ambulance etc.	Medicare pays for medical services in or out of the hospital.	80% of approved amount (after $ deductible)	$ Deductible** plus 20% of balance of approved amount (plus [~~any charge~~] [~~above approved~~] [~~amount~~] up to 15% above approved charge)***		
HOME HEALTH CARE	Visits limited to medically necessary skilled care	Full cost of services; 80% of approved amount for durable medical equipment (after $ deductible).	Nothing for services; 20% of approved amount for durable medical equipment (after $ deductible).		
AT-HOME RECOVERY BENEFIT	Short-term at-home assistance with	Nothing	All costs		

	activities of daily living.****		
OUTPATIENT HOSPITAL TREATMENT	Unlimited if medically necessary.	80% of approved amount (after $ deductible).	Subject to deductible plus 20% of approved amount.
BLOOD	Blood	80% of approved amount (after $ deductible and starting with 4th pint).	First 3 pints plus 20% of approved amount (after $ deductible)*****
PREVENTIVE CARE-PATIENT EDUCATION	Annual physical exam, preventive testing, influenza vaccines	Screening pap smears once every 3 years; screening mammograms every 24 months [~~second year~~].	All costs not covered by Medicare
OUTPATIENT PRESCRIPTION DRUGS	Outpatient prescription drugs	Nothing	All costs
FOREIGN TRAVEL	Medically necessary emergency care in foreign country.	Doctor and ambulance service in Canada and Mexico if in connection with covered inpatient [~~Nothing~~]	All costs not covered by Medicare
OTHER******			

*	If the policy being replaced is not a standardized policy, insert "N/A".
**	Once you have had $ of expense for covered services in 19 , the Part B deductible does not apply to any further covered services you receive for the rest of the year.
***	YOU PAY FOR charges higher than the amount approved by Medicare unless the doctor or supplier agrees to accept Medicare's approved amount as the total charge for services rendered.
****	At home recovery benefits must be received in conjunction with Medicare approved home health care benefits.
*****	To the extent the blood deductible is met under one part of Medicare during the calendar year, it does not have to be met under the other part.
******	Use this area to compare prestandardization and/or innovative benefits.

NOTICE TO APPLICANT:
Do not sign this form unless it has been explained to you.

Applicant Date Agent Date

NOTICE TO AGENT/INSURER:
This form is to be retained by the replacing insurer and attached to the replacement policy.

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APPENDIX D
DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Federal Law, PL 103-432, prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.

2. All types of health insurance policies that duplicate Medicare shall include one (1) of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.

4. Property/casualty and life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. The federal law does not preempt state laws that are more stringent than the federal requirements.

7. The federal law does not preempt existing state form filing requirements.

(For policies that provide benefits for expenses incurred for an accidental injury only)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

* hospital or medical expenses up to the maximum stated in the policy.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

* hospitalization.
* physician services.
* other approved items and services.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about Medicare and Medicare Supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For policies that provide benefits for specified limited services)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

* any of the services covered by the policy are also covered by Medicare.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

* hospitalization.
* physician services.
* other approved items and services.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement insurance.

This insurance duplicates Medicare benefits when it pays:

* hospital or medical expenses up to the maximum stated in the policy.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

* hospitalization.
* physician services.
* hospice.
* other approved items and services.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

* hospitalization.
* physician services.
* hospice.
* other approved items and services.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement insurance.

This insurance duplicates Medicare benefits when:

* any expenses or services covered by the policy are also covered by Medicare.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

* hospitalization.
* physician services.
* hospice.
* other approved items and services.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For policies that provide benefits for both expenses incurred and fixed indemnity basis.)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement insurance.

This insurance duplicates Medicare benefits when:

* any expenses or services covered by the policy are also covered by Medicare; or

* it pays the fixed dollar amount stated in the policy and Medicare covers the same event.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

* hospitalization.
* physician services.
* hospice.
* other approved items and services.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For long-term care policies providing both nursing home and non-institutional coverage.)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

* This is long term care insurance that provides benefits for covered nursing home and home care services.

* In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.

* This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most long term care expenses.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about long term care insurance, review the "Shopper's Guide to Long Term Care Insurance", available from the insurance company.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For policies providing nursing home benefits only.)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES COME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

* This insurance provides benefits primarily for covered nursing home services.

* In some situations Medicare pays for short periods of skilled nursing home care and hospice care.

* This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement insurance.

Neither Medicare nor Medicare supplement insurance provides benefits for most nursing home expenses.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already

have.

* For more information about long term care insurance, review the "Shopper's Guide to Long Term Care Insurance", available from the insurance company.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For policies providing home benefits only.)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

* This insurance provides benefits primarily for covered home services.

* In some situations Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.

* This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement insurance.

Neither Medicare nor Medicare supplement insurance provides benefits for most services in your home.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about long term care insurance, review the "Shopper's Guide to Long Term Care Insurance", available from the insurance company.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

(For other health insurance policies not specifically identified in the previous statements.)

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME
MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare supplement Insurance.

This insurance duplicates Medicare benefits when it pays:

* the benefits stated in the policy and coverage for the same event is provided by Medicare.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

* hospitalization.

* physician services.

* hospice.

* other approved items and services.

Before You Buy This Insurance

* Check the coverage in all health insurance policies you already have.

* For more information about Medicare and Medicare supplement insurance, review the "Guide to Health Insurance for People with Medicare", available from the insurance company.

* For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

THEODORE RICH, Commissioner
LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: April 9, 1996
FILED WITH LRC: April 11, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 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 May 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. 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 May 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, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032, Ext. 239.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: There are currently 80 insurers approved to sell Medicare supplement insurance policies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comments have not been received at this point. However, the department does not anticipate an 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: Public comments have not been received at this point. The department does not anticipate an effect 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: There are some changes in the Medicare supplement policies issued by insurers. The department anticipates a minor effect on insurers' paperwork.

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 costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate any effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The normal budget used by the Department of Insurance.

(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 are no public comments. However, the department sees no economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendments are made pursuant to federal mandates. If the regulation is not amended; all Medicare supplement policies have to be certified by the Federal Secretary of Health & Human Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environment welfare of the geographical area in which implemented and on Kentucky: Kentucky may continue to sell Medicare supplement insurance policies without having the Federal Secretary of Health & Human Services to certify the policies. Those persons who need to purchase a Medicare supplement policy may do so without interruption.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department is without sufficient knowledge to say that the effect on public health would be detrimental.

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied, because the amendments apply equally to all insurers selling Medicare supplement policies.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amendment)

807 KAR 5:026. Gas service; gathering systems.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.485[(3)]

NECESSITY AND FUNCTION: KRS 278.040(3) provides that the commission may adopt, in keeping with KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.485(1) provides that gas service shall be furnished at rates and charges [as] determined by the commission. KRS 278.485(3) provides [requires] that safety [installation and] standards [of safety] for installation of service lines may be prescribed by the commission. This administrative regulation applies [establishes rules which apply] to service from natural gas gathering pipeline systems.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Average volumetric rate" means the rate of a local gas distribution utility subject to rate regulation by the commission which is an average of the utility's volumetric retail gas sales rates for residential customers as authorized by the commission. ["Commission" means Public Service Commission.]

(2) "Customer meter" means the device [meter] that measures the transfer of gas from the pipeline [gas] company to the consumer.

(3) "Customer line [piping]" means all equipment and material required to transfer natural gas from the tap on the gathering line to the customer's premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required. [section(s) of natural gas piping owned by the customer as established by Section 3 of this administrative regulation.]

(4) "Gas company" means the owner of any producing gas well or gathering line.

(5) "Gathering line" means any pipe[line] which carries uncompressed gas and which is used to gather[ing] gas from a producing gas well [excluding pipelines on the discharge side of compressor stations].

(6) "Interior line [fuel gas piping]" means pipe used to transfer natural gas [the line] from the point of entry into a [the] building to the point or points of use [utilization].

(7) "Price index" means the average of the producer price index-utility natural gas (PPI 05-5) for the most recent twelve (12) month period as published monthly by the United States Department of Labor, Bureau of Labor Statistics. ["Service line" means a line that transports gas from a gathering line to:

(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or

(b) The connection to a customer's piping if there is no customer meter.

(8) "Yard line" means a line that transports gas from:

(a) A customer meter or the connection to a customer's piping, whichever is farther downstream; or

(b) The connection to a customer's piping if there is no customer meter to point of entry into the building.]

Section 2. Construction Standards. Construction [Instances] not specifically addressed [covered] by this administrative regulation shall meet[, where] applicable[, the] requirements of the "American National Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (ASME [ANSI] B31.8)" 1992 [1982] edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017, which is [herein] incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8 a.m. to 4:30 p.m., at the commission office, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall apply [file applications] at the local gas company office. Applications shall contain [the following information]:

(a) The name and address of the applicant.

(b) The purpose for which gas is requested.

(c) The name and address of the contractor who will install the customer [installing service or yard] line [and other facilities required to be furnished by applicant].

(d) The name and address of the gas company from which service is requested.

(2) The gas company shall furnish the applicant with construction drawings specifying the [showing] installation methods and the materials [meeting the company's specifications as] approved by the commission for service installation.

(3) Prior to providing service, [After receipt of the application,] the gas company shall furnish a copy of the application to the commission.

(4) Upon receipt of a copy of the application, the commission shall cause the customer line to be inspected for compliance with commission specifications. Service shall not commence until

commission specifications have been met. [Applicant's gas service or yard line shall be inspected and approved by commission staff before service is commenced. No service or yard line shall be inspected for which an application has not been received.]

(5) The commission shall notify the applicant by mail if the customer [service or yard] line does not comply with commission specifications [meet the requirements of its rules and administrative regulations]. If subsequent inspection reveals that defects have not been [are not] corrected [within the time permitted], the commission shall notify the gas company, and the gas company shall take no further action on the application [application shall be discontinued by the company] until the defects have been [are] corrected.

(6) The gas company shall furnish, install, and maintain the meter and the service tap, including saddle and first service shutoff valve, which shall remain its property. The gas company shall ensure that its name appears on each of its meters.

(7) [The service tap including saddle and first service shutoff valve shall be installed by the gas company and shall remain its property unless other provisions are made by tariff approved by the commission.

(8)] All other approved equipment and material required for the [such] service shall be furnished, installed, and maintained by the customer [applicant] at his expense and shall remain his [applicant's] property.

(8) [(9)] If leaks or other hazardous conditions are detected in the customer [service or yard] line, the gas company shall discontinue service until the [such leaks or other] hazardous conditions have been [are repaired or] remedied [by customer].

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be smaller than the diameter of the gathering line.

(2) Connections shall be on the upper one-half (1/2) of the gathering line [pipe] surface, and [preferably] at a [an angle of] forty-five (45) degree angle where practicable. [degrees.]

(3) Connections shall be at right angles to the center line of the gathering line.

(4) A service shutoff valve shall immediately follow the connection to the gathering line.

(5) A drip tank shall be installed preceding regulating equipment, but may be omitted upon prior approval of the commission [staff].

Section 5. Control and Limitation [Limiting] of Gas Pressure. (1) If [When] maximum gas pressure on the gathering line [pressures] may exceed sixty (60) psig, a service regulator shall be installed between the service shutoff valve and the customer meter, and a secondary regulator [located upstream from the service regulator] shall be installed between the service regulator and the customer meter. Regulators shall be spring type, and the secondary regulator shall not [in no case] be set to maintain pressure higher than sixty (60) psig. A spring type relief valve shall be installed to limit pressure on the inlet of the service regulator to sixty (60) psig or less [in case the secondary regulator fails to function properly].

(2) Every customer [service] line shall be equipped with an adequate spring type relief valve. The valve may be part of the final stage regulator.

(3) Regulators shall not be bypassed.

(4) Each relief valve shall be vented into outside air, and all [.

(5)] vents shall be covered to prevent water and insects from entering.

(5) [(6)] All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.

(6) [(7)] Regulating equipment shall be properly protected by the customer [applicant].

Section 6. Customer [Service or Yard] Lines and Metering Facilities. (1) The customer shall furnish and install the customer [service or yard] line from the tap to the point of use [utilization]. The customer shall [also] secure all rights-of-way and [,] railroad, highway, and other crossing permits. The customer['s service] line shall be laid on undisturbed or well compacted soil in a separate trench, avoiding all structures and hazardous locations. No structure shall be erected over the [service or yard] line.

(2) No branch tee or other connection shall be installed [permitted] on the line to serve any user other than the customer [applicant] without prior written consent of the gas company and the customer. If consent is given, [applicant, in which event] service to each user shall have an automatic shutoff valve with manual reset located on the riser in a horizontal position. The [Such] shutoff valve shall have maximum operating pressure of eight (8) ounces PSIG with a shutoff pressure setting of not less than two (2) ounces.

(3) Customer [Service or yard] lines shall not [be constructed to avoid subsurface structures but in no case shall service lines] be constructed nearer [within a distance of less] than thirty-six (36) inches to [from] any subsurface structure.

(4) Customer [Service or yard] lines, including the connection to the main, where feasible, shall be [leak] checked for leaks by the gas company prior to first use [being placed into service]. If it is [feasible the service line connection to main shall be included in the test; if] not feasible to test the connection to the main before first use, it shall be [given a leakage] tested for leaks at the operating pressure when placed into service. Customer [Service or yard] lines shall be tested by the gas company with air, natural gas, or inert gas at [to] fifty (50) psig for at least thirty (30) continuous minutes.

(5) Customer [Service or yard] lines shall be purged after testing to remove any accumulated air [accumulations].

(6) Metering pressure shall not exceed eight (8) ounces [per square inch] or .5 psig, unless [or as] otherwise approved in advance by the commission.

(7) Steel customer [service or yard] lines shall be constructed of [new plant coated] black finish steel pipe, at least one and one quarter (1 1/4) inches in diameter or larger, that conforms to standards in the Standard Specification for Pipe, Steel, Black, and Hot-dipped, Zinc Coated, Welded and Seamless (A53-95a) 1995, as published by the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602. [with] All joints and fittings shall be coated or taped, in accordance with manufacturer's recommendations, from the gas meter to the outlet side of the stopcock located on the riser entering [into] the building. Steel customer lines shall be installed with at least twelve (12) inches of cover on private property and at least eighteen (18) inches of cover on streets and roads. If [and shall be of a size not less than one and one fourth (1 1/4) inches.

(a) When] the steel customer [service] line passes through tillable [cultivated] land, the trench shall be of sufficient depth to permit [backfill cover of] twenty-four (24) inches of backfill above the service line.

[(b) Where twenty four (24) inch cover is not practical, trench depth shall be sufficient to permit minimum cover of eighteen (18) inches.]

(8) Each steel customer [service or yard] line shall have two (2) insulating joints, one (1) between the secondary regulator and the customer meter, and one (1) at the point of entry into the building [of which shall follow the regulating units, the other shall separate the yard line from interior fuel gas piping].

(9) Plastic customer [service or yard] lines shall be constructed of one and one-quarter (1 1/4) [plastic] pipe that meets the Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings (D 2513-94a), 1994 edition, as published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia,

Pennsylvania, 19103, which is incorporated by this reference. Copies are available for public inspection and copying, subject to copyright law, Monday through Friday, holidays excepted, from 8:30 a.m. to 4:30 p.m., at the commission's offices, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602. [~~qualified for gas use in accordance with American Society for Testing and Material standards.~~] Plastic customer [~~service~~] lines shall [~~only~~] be installed with at least twelve (12) inches of cover on [~~in~~] private property and at least eighteen (18) inches of cover on [~~in~~] streets and roads. When passing through tillable [~~cultivated~~] land, the plastic customer [~~service~~] line shall be installed with at least twenty-four (24) inches of cover. Plastic customer [~~service~~] lines shall be buried with an electrically conductive wire to enable inspectors to locate [~~capable of locating~~] the plastic line. All joints in plastic [~~service~~] lines shall be made by persons qualified under 807 KAR 5:022, Section 7(8), to join plastic pipe. [~~in accordance with the provisions of 49 CFR Part 192.285.~~] No [~~exposed~~] plastic line shall be installed above ground.

(10) Customer [~~Yard~~] lines shall enter the building above ground level, and [~~with~~] a stopcock [~~shutoff~~] valve shall be located on the riser.

(11) [~~Service to~~] Each customer's service shall have an automatic shutoff [~~cutoff~~] valve with manual reset to stop [~~shut off~~] gas flow if gas pressure fails. The valve may be part of the final stage regulator and [~~. Such a valve~~] shall have operating pressure of eight (8) ounces with shutoff pressure setting of not less than two (2) ounces.

Section 7. Failure to Pay[~~ment of~~] Bills or Other Default. (1) [~~The~~] Customers shall be required to pay the installation charge and to [~~thereafter~~] pay [~~the gas company~~] for all gas delivered at rates approved by the commission. The gas company shall render statements to the customer at regular monthly or bimonthly intervals. [~~for gas delivered. These~~] Statements shall be rendered within [~~not later than~~] ten (10) days following each billing period. [~~No gas company shall discontinue~~] Service shall not be discontinued to any customer for nonpayment of charges unless the gas company has first [~~bills (including delayed payment charges) without first having~~] made a reasonable effort to obtain payment from [~~induce~~] the customer [~~to pay the bill~~]. The customer shall be given at least forty-eight (48) hours' written notice of termination, but no termination of service shall be made until at least [~~, but cutoff shall not be effected before~~] fifteen (15) days after [~~the mailing date of~~] the original bill has been mailed. Service shall not be reestablished until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of twenty-five (25) dollars, and has complied fully [~~placed himself in full compliance~~] with applicable service [~~commission~~] administrative regulations [~~pertaining to such service~~]. If the customer has not paid amounts owed, or if the customer has not complied [~~fails or refuses to pay such unpaid bill(s) and turn on charge or to comply~~] with commission administrative regulations within thirty (30) days from the date the gas is turned off, the gas company may disconnect the customer[~~'s service~~] line from its gathering line. Service shall not be reestablished until the customer has complied with provisions of this [~~commission~~] administrative regulation[~~s~~] pertaining to initial service.

(2) The gas company may require a cash deposit or other guaranty from the customer to secure payment[~~s~~] of bills.

Section 8. General Provisions. The gas company shall [~~at all times~~] have reasonable access to the customer's premises [~~where the connection is made and the meter is located~~], and may shut off gas and remove its property from the [~~said~~] premises upon reasonable notice for any of the following reasons:

(1) Need for repairs [~~or because of leakage~~];

(2) Nonpayment [~~of any bills~~];

(3) Failure to make a cash deposit, if required;

(4) Any violation of this administrative regulation;

(5) [~~moving of the~~] Customer's removal from premises;

(6) [~~fraudulent~~] Tampering with the meter, regulators, or connections;

(7) Shortage of gas or reasons of safety;

(8) Theft [~~larceny~~] of gas;

(9) Any action by a customer to secure gas through his meter [~~gas~~] for purposes other than those for which it was requested, or for any other party without written consent of the gas company; or

(10) False representation with respect to ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Rates. Each gas company shall charge rates filed with and approved by, the commission. A gas company may request an adjustment in its rates to reflect changes in its costs to provide service pursuant to KRS 278.485.

(a) A gas company which provides service pursuant to KRS 278.485 may request an adjustment in rates through a proposed tariff submitted at least sixty (60) days prior to its proposed effective date if:

1. The percentage change in rates does not exceed the percentage change in the price index during the most recent twelve (12) month period immediately preceding the date the proposed tariff is filed; and

2. The proposed rate does 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. The commission shall provide the current percentage change in the price index and the highest prevailing rate upon written request.

(b) If the proposed percentage increase in rates exceeds the percentage change in the price index but the proposed rate remains below the highest prevailing gas rate approved by the commission, the gas company shall submit, with its proposed tariff, cost data which support the proposed increase. The data shall include the gas company's costs to provide the service during each of the previous two (2) years and shall be current within ninety (90) days of the date the proposed tariff is filed.

(c) A proposed tariff increasing rates shall not be filed with a proposed effective date less than one (1) year later than the last commission approved increase. Once the commission has determined that sufficient information has been filed with the proposed tariff, the commission shall either approve or deny the proposed adjustment within sixty (60) days. The commission may suspend the proposed tariff beyond the sixty (60) day review period.

(d) A gas company which files a proposed tariff to increase rates shall mail notice to its customers no later than twenty (20) days prior to the filing date of the proposed tariff. The notice shall be dated, shall state the proposed rate and the estimated amount of monthly increase per customer, and shall state that any customer may file comments or a request to intervene by mail to the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

(e) In lieu of a rate adjustment through a proposed tariff, a gas company may file an application with the commission for authority to adjust rates pursuant to 807 KAR 5:001, Section 10. If eligible, the gas company may file under the alternative rate adjustment procedure, 807 KAR 5:076.

(2) Charges.

(a) Any nonrecurring, customer-specific charge, such as those listed in 807 KAR 5:006, Section 8, that is assessed by the gas company shall be listed in its tariff. These charges may be adjusted by filing a proposed tariff with the commission at least thirty (30) days prior to the effective date of the adjustment.

(b) Each gas company may charge $150 for each service tap, including saddle and first shutoff valve which, under this administrative regulation, it must furnish and install. [~~are required to be furnished and installed by the gas company. No part of this charge shall be refunded by the gas company.~~]

~~(2) Each gas company shall charge, for gas used, tariff rates~~

~~which have been approved by the commission, or if none, current Federal Energy Regulatory Commission approved rate.~~]

(3) Provisions contained in this administrative regulation shall apply only to connections made and services provided [~~made~~] pursuant to KRS 278.485 after [~~and subsequent to~~] the effective date of this administrative regulation.

(4) In providing notice as required by Section 9(1)(d) of this administrative regulation, the gas company shall use the following form:

NOTICE OF PROPOSED RATE CHANGE

(Name of gas company) has filed a request with the Public Service Commission to increase its rates. The rates contained in this notice are the rates proposed by (name of gas company). However, the Public Service Commission may order rates to be charged that differ from the rates in this notice.

Any corporation, association, body politic, or person may file written comments or a written request for intervention within thirty (30) days of the date of this notice with the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

Copies of the request for an increase in rates may be obtained by contacting the gas company at (address of gas company). A copy of the request for an increase in rates is available for public inspection at this address.

Present Rate	Proposed Rate	Estimated Monthly Increase Per Customer

Section 10. Deviation from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

LINDA K. BREATHITT, Chairman
PAUL PATTON, Governor

APPROVED BY AGENCY: April 2, 1996

FILED WITH LRC: April 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 1996 at 10 a.m. at the Public Service Commission's office, Hearing Room No. 1, 730 Schenkel Lane, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by May 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: Don Mills, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, (502) 564-3490.

REGULATORY IMPACT ANALYSIS

Contact person: Don Mills, Executive Director

(1) Type and number of entities affected: According to current commission records, 120 entities provide gas service to consumers pursuant to KRS 278.485 and will be affected by the amendments to this regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments on this subject were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments on this subject 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: No significant increase in paperwork or other requirements is required, since information regarding rates have previously been filed with the commission by entities charging consumers for service pursuant to KRS 278.485. Compliance with requirements that some lines must be buried more deeply may result in initial costs for some gas companies or consumers affected. However, the cost to the company of putting its name on its meters should be negligible.

2. Second and subsequent years: No significant long-term effect is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs or savings to the commission are expected. Regulation of entities pursuant to the amended regulation will be handled in the ordinary course of business.

1. First year: See answer to (3)(a).

2. Continuing costs or savings: See answer to (3)(a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed requirement that gas companies providing service pursuant to KRS 278.485 ensure that their names appear on their respective meters will conserve inspector time when reporting on the safety aspects of the service.

(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: No additional revenue is required to enforce or implement these amendments.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. However, no significant economic effect on any geographical area is expected.

(b) Kentucky: No public comments were received. However, no significant economic effect on Kentucky is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 278.485 requires the commission to approve rates charged by companies providing service pursuant to this statute. When the Federal Energy Regulatory Commission (FERC) ceased to oversee these rates, the Kentucky Public Service Commission was required to consider methods by which it will fulfill its statutory mandate in the absence of FERC oversight. One method is to require these gas companies to file for rate changes pursuant to the existing regulations, 807 KAR 5:001, Section 10 (full rate case) or 807 KAR 5:076 (alternative rate filing procedure for small utilities). However, pipeline companies furnishing service pursuant 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 rate-making. Therefore, it was decided that while traditional methods would remain available to them, the companies should be given the option of applying for rate adjustment by means of filing proposed tariffs within the parameters set by (1) the percentage change in the applicable producer price index, and (2) the highest volumetric rate of a local gas distribution utility approved by the commission and in effect on the date the proposed tariff is filed. The rate adjustment procedures in the proposed amendments are fair to and impose a minimum burden on the companies, while providing protection to consumers.

(8) Assessment of expected benefits: Gas companies providing

service pursuant to KRS 278.485 will be given reasonable methods to apply for rate adjustments, while consumer interests will be protected. In addition, public safety will be enhanced by amendments to construction requirements.

(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: No

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict exists. There is some duplication in 49 CFR 192, which incorporates the American Society of Testing and Materials standards incorporated in Section 6 of this proposed regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Small companies providing service pursuant to KRS 278.485 will be specifically permitted to use the alternative rate filing procedure pursuant to 807 KAR 5:076. The commission recognizes that smaller companies frequently lack the staff and the expertise to file for rate adjustments pursuant to the more complex requirements of 807 KAR 5:001, Section 10.

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

815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements.

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the business of heating, ventilation and air conditioning (HVAC) contracting to be registered effective July 1, 1995. This administrative regulation sets forth the requirements for registration and certification of apprentice. This administrative regulation amendment is necessary in order to state that apprentices registered with the Division of Employment Standards in the Kentucky Labor Cabinet will be recognized as conforming with the registration requirements in KRS Chapter 198B and to amend the administrative regulation to delete the registration fee for apprentices.

Section 1. Registration of Apprentices. (1) Except for those HVAC apprentices registered with the Division of Employment Standards, Kentucky Labor Cabinet [~~Effective July 1, 1995~~], all apprentices, as defined by KRS 198B.650, shall be registered with the board and comply with this administrative regulation.

(2) Each individual registered with the board shall be issued an HVAC certificate of apprenticeship pursuant to KRS 198B.658(3) and this administrative regulation.

(3) The HVAC registration form shall be updated annually by the apprentice and submitted to the board:

(a) To indicate changes of address or employer; and

(b) To record work hours under the supervision of a master contractor.

(4) The certificate of registration shall authorize an individual to work in the HVAC trade under the direct supervision of at least one (1) journeyman HVAC mechanic as well as the general supervision of a master contractor.

(5) The application of registration shall include the license number and signature of the supervising master contractor.

Section 2. Initial Application for Apprentice Certificate of Registration. [~~(1)~~] Registration shall be accomplished by completing and filing the HVAC Apprentice Registration Form HVAC 3, November, 1994, hereby incorporated by reference, to the Department of Housing. Copies of the registration form are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

[~~(2) The initial application fee shall be ten (10) dollars.~~]

Section 3. Certificate Renewal Requirements. (1) Certificates shall expire on June 30 of each year.

(2) Each apprentice shall renew the registration annually by July 1 by completing and filing the HVAC Apprentice Registration Form HVAC 3, November, 1994.

(3) Failure to be registered with the board shall disqualify an apprentice from work until the apprentice shall renew the registration.

[~~(4) The fee for renewal shall accompany the registration form.~~

~~(5) The renewal fee shall be five (5) dollars.~~]

Section 4. Minimum Number of Hours of Experience. (1) The minimum number of work hours to be completed by an apprentice as part of the required two (2) years of experience to apply for an HVAC journeyman mechanic license pursuant to 815 KAR 8:020 and shall be 3,000 work hours.

(2) The apprentice shall retain personal records of employment hours which substantiate the experience necessary to apply for a journeyman HVAC mechanic.

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 10, 1996

FILED WITH LRC: April 12, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, May 22, 1996 at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Approximately 400 would-be HVAC mechanics across the state who will register with the HVAC apprenticeship 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: Estimated savings to approximately 400 individuals wishing to register as HVAC apprentices amounting to approximately $4,000.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a registration program and no additional paperwork is required.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $4,000 (400 x $10) reduction in department's revenue.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Cost to department would be reduced or increased based on whether the overall number of apprentices registered increases or decreases. Department will realize minimal administrative savings equal to the number of participants who register with Division of Employment Standards, Kentucky Labor Cabinet.

(b) Reporting and paperwork requirements: Minimal reduction to department due to shared registration responsibility with Division of Employment Standards, Kentucky Labor Cabinet.

(4) Assessment of anticipated effect on state and local revenues: $4,000 reduction in department's revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sufficient trust and agency funds generated from HVAC Licensing Program to cover cost of registering apprentices.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This is a statewide program and the impact is minimal.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a relatively new program which was implemented in strict compliance with the statutory mandate.

(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 statutory change provides an alternative which will encourage participation. Increased registration of apprentices will enhance the safety and health of the public throughout the state by establishing minimum requirements for employment as an HVAC apprentice mechanic as they prepare for licensing as journeyman HVAC mechanics or contractors (master HVAC license).

(b) State whether a detrimental effect on environment and public health would result if not implemented: Program to abate potential health and safety hazards would be diminished slightly in the short run and possibly greater in the long run.

(c) If detrimental effect would result, explain detrimental effect: Training and education of personnel to assure the responsibility for HVAC installations would be lessened slightly.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied in the original legislation when the type of license (master, journeyman or apprentice) was established and the level of responsibility and fees were graduated accordingly.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. These product changes were approved at the February 12, 1996 Plumbing Code Committee meeting. [~~This product was approved by the Plumbing Code Committee at their August 7, 1995 meeting.~~]

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section

5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and

pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

17. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480, all requiring an approved pressure and temperature relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) [~~eighteen (18)~~] inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 10, 1996

FILED WITH LRC: April 12, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, May 22, 1996 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 1996, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any

person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There will be no impact on the cost of living or employment with this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Provides ability of manufacturer to market his product in the state.

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(4) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable with this amendment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable with this amendment.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)

900 KAR 2:020. Appeals.

RELATES TO: KRS 216.567

STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 194.050, 216.567, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services [~~Human Resources~~] is authorized by KRS 216.567 to establish the manner in which appeals are to be presented on any decision on ratings, citations or penalties assessed pursuant to KRS 216.535 et seq. This administrative regulation is designed to set forth the procedure by which appeals from assignment of ratings pursuant to 900 KAR 2:030, and imposition of citations and assessment of penalties pursuant to 900 KAR 2:040, shall be conducted [~~pursued within the Cabinet for Human Resources~~]. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Citation" means a written notice of violation issued pursuant to KRS 216.555.

(3) "Hearing officer" is defined in KRS 13B.010(7).

(4) [~~(2)~~] "Party" means the licensee operating a long-term care facility.

Section 2. (1) Upon the assignment of a rating for a long- term care facility pursuant to KRS 216.550, or whenever the cabinet has reason to believe there has been a violation of any requirement enforced by the cabinet pursuant to KRS 216.555, or whenever the cabinet assesses a penalty pursuant to KRS 216.557 or 216.560, it shall issue and serve by certified mail or by personal service on the licensee of the facility, the administrator, or designated representative as defined in 900 KAR 2:010, or its agent for service of process a written notice of rating, citation or penalty. Said notice shall set forth the rating assigned, citation made, or penalty assessed, together with the specific findings of the cabinet alleged to result in the action taken and shall advise the licensee of the facility of his right to appeal the imposition of such rating, citation or penalty at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Health Services [~~Human Resources~~]. Upon receipt of the written request for hearing, the secretary shall designate a [~~appoint an impartial~~] hearing officer [~~to hear and decide upon appealed decisions~~].

(3) A hearing shall be scheduled and commenced as soon as practicable after [~~within thirty (30) days of~~] receipt of the request for hearing. Notice of the hearing shall be served [~~mailed~~] by certified mail, return receipt requested, to the last known address of the parties, or by personal service, not less than twenty (20) days in advance of the hearing date. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, administrative regulations and administrative action by the cabinet involved, and shall comply with KRS 13B.050(3).

(4) [~~Prior to the formal hearing, and upon seven (7) days' written~~

~~notice to all parties, delivered personally or by certified mail, return receipt requested,~~] The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing order [~~conference report~~] shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. [~~Any party to a hearing and the administering agency may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.~~

~~(6) All testimony at the hearing shall be recorded but need not be transcribed unless the decision of the hearing officer is subject to appeal. Any party to a proceeding may request a transcript of the proceeding and shall pay the entire cost of the preparation of the transcript.~~

~~(7) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.~~]

(6) [~~(8)~~] Within sixty (60) [~~thirty (30)~~] days of the closing [~~adjournment~~] of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding. The record shall consist of those items listed in KRS 13B.130, including: [~~include:~~]

(a) The notice of rating, citation, or penalty assessed which was forwarded to the licensee;

(b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;

(c) Any information provided by the parties which was introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review;

(e) Upon its completion, the prehearing orders [~~conference report~~], if any, and the report of the hearing officer containing the findings of fact, conclusions of law and final decision.

(7) [~~(9)~~] Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.570. Any appeal of a Type A or Type B citation shall in no way be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct a Type A or Type B violation in a timely manner.

(8) In addition to the grounds for disqualification set forth in KRS 13B.040(2)(b), [~~(10)~~] no hearing officer shall participate in any hearing involving a long term care facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 21, 1996, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 16, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4th West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau/David Crane

(1) Type and number of entities affected: 888 providers of long term care.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

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

1. First year following implementation: Minimal
2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: Minimal
2. Continuing cost or savings: Minimal
3. Additional factors increasing or decreasing costs: Legal costs associated with hearings and appeals.

(b) Reporting and paperwork requirements: Legal paperwork involved in the hearing process.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Amendments to this regulation are required by KRS Chapter 13B.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: KRS Chapter 13B amendments to this administrative regulation should have only a minor impact.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not used because all hearings are required to meet the same KRS Chapter 13B requirements.

CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)

900 KAR 2:060. Hearings concerning transfer and discharge rights.

RELATES TO: KRS 194.030(12)(b)
STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 216.515, 216.525, 216.557, 216.560, 216.567, 42 CFR 483.12, EO 95-79
NECESSITY AND FUNCTION: 42 CFR 483.12 requires that the state shall have in place a fair and impartial decision-making process for appeals related to involuntary transfer and discharge. This administrative regulation sets forth guidelines for this process for long-term care facilities as licensed by 902 KAR 20:300 or those long-term care facilities certified in accordance with 42 CFR 483. This administrative regulation sets forth the hearing process for appeals related to residents' transfer and discharge rights under Kentucky's Nursing Home Reform statutes and administrative regulations. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1) excluding those facilities licensed as family care homes.

(3) [~~(2)~~] "Hearing officer" is defined in KRS 13B.010(7). [~~means the person designated by the cabinet to conduct a hearing and make a decision regarding any appealed transfer or discharge.~~]

(4) [~~(3)~~] "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

Section 2. Hearing Procedure. (1) In accordance with 900 KAR 2:050, Section 3(5), a resident has fifteen (15) days from receipt of the facility's notice of intent to transfer or discharge the resident to notify the cabinet in writing of his intent to appeal.

(2) Upon receipt of the notice of appeal [~~in accordance with 900 KAR 2:050 or 900 KAR 2:020, Section 2(1) and (2)~~], the secretary of the cabinet shall designate [~~appoint~~] a hearing officer and a hearing shall occur as soon as practicable. [~~within thirty (30) days.~~]

(3) [~~(2)~~] Notice of hearing shall be served on [~~mailed to~~] the facility and resident not less than twenty (20) [~~ten (10)~~] days prior to the commencement of the hearing. The notice of hearing shall contain the reasons, time, and place of the hearing, and shall comply with KRS 13B.050(3). The notice of hearing shall be served [~~mailed~~] by certified mail, return receipt requested, or by personal service, to the facility and the resident.

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

[~~(3) The facility and the resident may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.~~

~~(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.~~

~~(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.~~

~~(6)(a) The hearing officer shall review the:~~

~~1. Cabinet's determination that the resident's rights were violated; and~~

~~2. Fine imposed by the cabinet.~~

~~(b) The hearing officer shall base his review of the cabinet's determination and fines on the:~~

~~1. Facts of the case; and~~

~~2. Requirements of KRS 216.555, 216.557, 216.560, and this administrative regulation.~~

~~(c) Appropriate to the facts of the case, KRS Chapter 216, and this administrative regulation, the hearing officer may:~~

~~1. Sustain the cabinet's determination and fine; or~~

~~2. Determine that the rights of the resident were not violated, and that the imposition of a fine was not warranted; or~~

~~3. Make a different determination with regard to the severity or type of violation, and the fine required by KRS Chapter 216; or~~

~~4. Make any other decision warranted by the facts, KRS Chapter 216, and this administrative regulation.~~

~~(7) The hearing shall be the only hearing as it relates to cabinet findings regarding fines, citations and cited deficiencies concerning transfer and discharge rights under this or any licensure regulations.~~]

(6) [~~(8)~~] The hearing officer's decision shall be the final determination of the cabinet. The cabinet shall forward the decision to the resident and facility within ten (10) days of the receipt of the hearing officer's decision.

(7) In addition to the grounds for disqualification set forth in KRS 13B.040(2)(b), [~~(9)~~] no hearing officer shall participate in any hearing involving a facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, fiduciary, contractual creditor or consultative relationship or any familial relation to the resident.

(8) [~~(10)~~] A judicial review may be accorded the resident or facility as specified in [~~the~~] KRS 13B.140 [~~216.570~~].

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary
APPROVED BY AGENCY: April 4, 1996
FILED WITH LRC: April 8, 1996 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 21, 1996, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 16, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4th West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau/David Crane
(1) Type and number of entities affected: Approximately 500 long term care facilities.
(2) Direct and indirect costs or savings to those affected:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comment received: No comments on this subject were received but no impact expected.

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

1. First year following implementation: Minimal

2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: Minimal

2. Continuing cost or savings: Minimal

3. Additional factors increasing or decreasing costs: Legal costs associated with hearings of appeals.

(b) Reporting and paperwork requirements: Legal paperwork involved in the hearing process.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is mandated by 42 CFR 483.12.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: KRS Chapter 13B amendments to this administrative regulation should have only a minor impact.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? This regulation sets forth standards as they relate to federal certification requirements and Kentucky's Nursing Home Reform statutes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 483.

2. State compliance standards. 900 KAR 2:050 - Transfer and discharge rights; 902 KAR 20:300 - Operation and services; nursing facilities.

3. Minimum or uniform standards contained in the federal mandate. Federal standards require that the state have in place an appeals procedure for those individuals who feel that their transfer and discharge rights have been violated. 900 KAR 2:050 sets forth those rights as described in the federal certification standards for nursing facilities. Specific provisions for the conduct of administrative hearings into these matters are provided for in this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? Yes. While this regulation mirrors the federal standards, additional providers beyond the federal mandate are included under the authority of the Kentucky nursing home reform statutes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. All long term care facilities must meet state requirements as they relate to Kentucky nursing home reform. This law provides for transfer and discharge rights and this regulation sets forth the standards for all long term care facilities except for those licensed as family care homes.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Health Systems Development
(Amendment)

902 KAR 13:010. Definitions for 902 KAR Chapter 13.

RELATES TO: KRS 211.952, 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to define terms that are used in administrative regulations promulgated by the cabinet relating to emergency medical technicians.

Section 1. Definitions. [~~As used in cabinet administrative regulations relating to EMTs, the following terms shall have the meanings set forth below unless the context requires otherwise:~~]

(1) "Applicant" means a person applying for training or certification as an EMT, EMT-instructor, or EMT-first responder under this administrative regulation.

(2) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~].

(3) "Certificate" means the certificate issued by the cabinet to an individual qualified to perform the duties of an EMT, EMT-instructor, or EMT-first responder.

(4) "Certified" means a person who holds a certificate issued pursuant to this administrative regulation.

(5) "Conviction" means the result of a criminal trial which ends in a final judgment or sentence that the accused is guilty as charged. A finding of guilty shall also include a plea of guilty, or a plea of nolo contendere. A conviction shall be considered a final judgment until it has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.

(6) "Council" [~~"Committee"~~] means the Kentucky Emergency Medical Services Council established by KRS 211.952 and [~~emergency medical services advisory committee (EMSAC)~~] appointed by the secretary of the cabinet to act in an advisory capacity.

(7) [~~(6)~~] "Emergency medical technician-first responder (EMT-first responder)" means an individual certified by the cabinet to perform a portion of the patient care skills of certified EMTs in order to stabilize a patient's condition until an EMT or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(8) [~~(7)~~] "Emergency medical technician-first responder instructor" means a person, other than an emergency medical technician instructor or emergency medical technician instructor trainer, who is qualified to teach EMT-first responder courses and who is approved [~~certified~~] by the cabinet to teach EMT-first responder courses.

(9) [~~(8)~~] "Emergency medical technician (EMT)" means an individual certified by the cabinet as an emergency medical technician [~~or as an emergency medical technician ambulance and~~] who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency

and en route to definitive medical care.

(10) [~~(9)~~] "Emergency medical technician instructor" means a person certified by the cabinet to teach emergency medical technician and EMT-first responder courses.

(11) [~~(10)~~] "Emergency medical technician instructor candidate [~~trainee~~]" means a certified emergency medical technician undergoing approved instruction and evaluation for eligibility to become certified as an emergency medical technician instructor while under the supervision of a certified emergency medical technician instructor.

(12) [~~(11)~~] "Emergency medical technician instructor trainer" means a person certified by the cabinet to teach emergency medical technician instructor courses and evaluate emergency medical technician instructor candidates [~~trainees~~].

(13) [~~(12)~~] "Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continuing medical response and intervention to safeguard the life, or physical well-being of a patient.

(14) [~~(13)~~] "Implementing agency" means a public or private organization, other than an instructor, instructor trainee, or instructor candidate [~~trainer~~], approved by the cabinet to conduct, supervise, coordinate, and operate an emergency medical technician or EMT-first responder training course.

(15) "The National Registry of Emergency Medical Technicians" means the national professional organization that specializes in written and practical skills testing of EMTs. Their service may be utilized for implementing the EMT certification written and practical examination process for participating states.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 14,000 emergency medical technicians and approximately 2,000 EMT first responders.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. A Notice of Intent hearing on this proposed administrative regulation was held on January 30, 1996. No public comments were receive related to cost of living and employment. This administrative regulation will have no effect on the cost of doing business in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A Notice of Intent hearing on this proposed administrative regulation was held on January 30, 1996. No public comments were receive related to the cost of doing business. This administrative regulation, when implemented, will have no effect on the cost of doing business in any geographical area within the state.

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

1. First year following implementation: This administrative regulation will have no effect on costs or competition.

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As above.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: A Notice of Intent Hearing on this administrative regulation was held on January 30, 1996. No comments were received related to economic impact. It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The proposed methods are compatible with methods for nationwide implementation of the revised EMT basic curriculum.

(8) Assessment of expected benefits: This administrative regulation is for the purpose of defining a new certification testing system that will be used and evaluated in a small scale pilot study before considering its adoption statewide.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The new certification system being reviewed in the pilot study is one increasingly being utilized in other states. It has the potential for standardizing certification testing nationwide, and would promote consistency among states.

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

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation addresses various levels of emergency medical technician certification and establishes definitions related to the different levels.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

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

administrative regulation will not affect a local government or division of that local government.

3. State the aspect or service of local government to which this administrative regulation relates. Emergency medical technicians who work as paid or volunteer employees for the local government operated ambulance service.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government in any additional manner. It provides definitions for all regulations in KRS Chapter 13 regarding the training and certification of the various levels of emergency medical technicians.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Health Systems Development
(Amendment)

902 KAR 13:020. Applicant[~~s'~~] requirements[~~; priority~~] for EMT training and certification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish applicant requirements for EMT [~~applicants and priority of applicants for~~] training and certification.

Section 1. Applicant Requirements for Training. An [~~Applicants. Each~~] applicant for EMT training who desires to apply for certification shall:

(1) Be at least eighteen (18) years of age by the completion of the EMT course in which the student is enrolled [~~or older~~];

(2) Understand and be able to read, speak, and write the English language; and

(3) Submit a signed application on the "Application for Emergency Medical Technician Certification" form (EMS Branch-2/96).

(4) Effective July 1, 1996, an applicant shall:

(a) Hold at least a high school diploma or equivalent; or

(b) Provide documentation to the training implementing agency that the applicant meets the reading and educational levels outlined in the Emergency Medical Technician/Basic Functional Position Description (4/93).

Section 2. Applicant Requirements for Certification. An applicant for certification shall not:

(1) [~~(2)(a) Not~~] Have been convicted of a felony or misdemeanor described in KRS 335B.010(4); or

(2) [~~(b) Not~~] Have been convicted of other crimes directly relating to the applicant's ability to perform the duties of an EMT;

(3) [~~Not~~] Be a person who compulsively and habitually uses drugs or controlled substances to the extent that it may effect his ability to perform the duties of an EMT; and

(4) [~~Not~~] Be a person who compulsively and habitually uses alcohol to the extent that it may affect his ability to perform the duties of an EMT[~~;~~

~~(5) Understand and be able to read, speak, and write the English language;~~

~~(6)(a) Submit a signed application on the "Application for Emergency Medical Technician (9-30-91)" form.~~

~~(b) "Application for Emergency Medical Technician (9-30-91)" is incorporated by reference.~~

~~(c) This form may be inspected, copied, or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday~~].

Section 3. Relevant Criminal Offenses. [~~2.~~] (1) In determining whether a crime directly relates to the ability of an applicant[~~'s ability~~] to become certified to perform the duties of an EMT, the cabinet shall apply the test set out in KRS 335B.020(2).

(2) The following crimes shall be considered by the cabinet as directly relating to the ability of an applicant[~~'s ability~~] to perform the duties of an EMT:

(a) Offenses under KRS Chapter 189 (traffic regulations punishable by fine or imprisonment or both);

(b) Offenses under KRS Chapter 189A (driving under the influence);

(c) Offenses under KRS Chapters:

1. 218A (controlled substances);
2. 507 (criminal homicide);
3. 508 (assault and related offenses);
4. 509 (kidnapping and related offenses);
5. 510 (sexual offenses);
6. 511 (burglary and related offenses);
7. 512 (criminal damage to property);
8. 513 (arson and related offenses);
9. 514 (theft and related offenses);
10. 515 (robbery);
11. 521 (bribery and corrupt influences);
12. 523 (perjury and related offenses);
13. 525 (riot, disorderly conduct and related offenses);
14. 527 (offenses relating to firearms and weapons);
15. 528 (gambling);
16. 529 (prostitution offenses);
17. 506 (Inchoate offenses [~~of attempts, conspiracy, or complicity to commit the offenses specified in this subsection~~]).

(3) The cabinet shall also consider convictions of other offenses if they directly relate to an applicant's ability to perform as an EMT [~~the duties of an EMT~~].

Section 4. Denial of Certification. [~~3.~~] The cabinet may deny an application for certification if it determines that an applicant:

(1) Does not meet the requirements specified in Sections 1 and 2 of this administrative regulation;

(2) Has been convicted of a crime described in KRS 335B.010(4); or

(3) Has been convicted of other crimes directly relating to the applicants ability to perform the duties of an EMT.

(4) Pursuant to 902 KAR 13:090, Section 5, an applicant who is denied certification shall have the right to have an administrative hearing.

[~~Section 4. Priority of Applicants for Training. Applicants for~~

~~training in courses offered to the public by implementing agencies shall be accepted according to the following priorities:~~

~~(1) First priority: ambulance personnel;~~

~~(2) Second priority: emergency room personnel and related emergency medical service personnel, such as public safety agencies, rescue and extrication, industrial safety, nursing personnel, and certified public school teachers designated as first aid personnel; and~~

~~(3) Third priority: all others.~~

~~(4) Applications shall be filed with the implementing agency ten (10) working days prior to the beginning of the course. The final selection of applicants for each course shall be made by the implementing agency.~~]

Section 5. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

(1) Application For Emergency Medical Technician Certification, form (EMS Branch-2/96).

(2) Emergency Medical Technician Basic Functional Position Description, 4/93.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 14,000 emergency medical technicians.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. A Notice of Intent hearing on this proposed administrative regulation was held on January 30, 1996. No public comments were received related to cost of living and employment. This administrative regulation will have no effect on the cost of doing business in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A Notice of Intent hearing on this proposed administrative regulation was held on January 30, 1996. No public comments were received related to cost of doing business. This administrative regulation, when implemented, will have no effect on the cost of doing business in any geographical area within the state.

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

1. First year following implementation: This administrative regulation will have no effect on costs or competition.

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As above.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: A Notice of Intent hearing was held on this proposed administrative regulation on January 30, 1996. No comments were received related to economic impact. It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The proposed methods are compatible with methods for nationwide implementation of the revised EMT basic curriculum.

(8) Assessment of expected benefits: This administrative regulation is for the purpose of establishing applicant requirements for training and certification of emergency medical technicians.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The applicant requirements for training have been slightly upgraded. It is felt that improved screening of qualified applicants for EMT training will result in more competent health care givers.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Unknown

(c) If detrimental result would result, explain detrimental effect: Unknown

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation addresses training and certification requirements for various levels of emergency medical technicians.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH SERVICES
Department for Health Services
(Amendment)

902 KAR 13:050. Training, examination, certification and recertification of the emergency medical technician.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964, EO 95-79
NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to emergency medical technicians (EMTS). The function of this administrative regulation is to establish requirements for training, examination, certification and recertification of the basic level of emergency medical technicians.

Section 1. EMT Training Course Requirements. (1) The EMT training course shall follow [~~The training course shall:~~

~~(1) Include~~] the United States Department of Transportation (DOT) 1984 [~~Basic~~] Emergency Medical Technician: National Standard Curriculum (NSC) (Third Edition, [~~, 1984) of the U.S. Department of Transportation and the accompanying text "Emergency Care" (Fifth Edition, 1990), The Brady Company, Prentice Hall, Inc., Englewood Cliffs, N.J. 07632. Each of these publications is incorporated by reference. They shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection and copying Monday through Friday from 8 a.m. until 4:30 p.m.;~~]

(2) Effective July 1, 1996, an EMT training course shall follow the DOT, National Highway Traffic Administration, 1994 NSC, EMT-Basic.

(3) Prior to July 1, 1996, an implementing agency may:

(a) Apply to the cabinet, utilizing the "Emergency Medical Technician Basic Course Inventory Pilot Program" form 10/95, to make application to be approved to conduct a pilot program utilizing the 1994 NSC, EMT-Basic; or

(b) Be considered to begin teaching the 1994 curriculum if:

1. The implementing agency is ready to teach the 1994 curriculum;

2. An application is submitted in writing to the cabinet;

3. The required materials are in place for the cabinet to process the application; and

4. The cabinet approves and assigns a course approval number.

(4) An implementing agency shall assume all responsibilities for conducting a 1994 EMT basic training course.

(5) Prior to commencing the course, the implementing agency shall substantiate that:

(a) A "Basic Course Inventory Pilot Program", (10/95) form has been submitted to the cabinet; and

(b) A course number has been assigned by the cabinet.

(6) During the time the course is being conducted, the implementing agency shall substantiate that the course:

(a) Is at least [~~(2) Be not less than~~] 119 hours in duration;

(b) Lessons are [~~(3) Be~~] taught by a lead instructor, who as a minimum is an EMT-instructor certified by the cabinet, and at least one (1) assistant to the lead instructor who shall minimally be a Kentucky certified EMT who meets the criteria of the lead instructor and the implementing agency or who may also be a Kentucky certified [~~EMT instructor trainee, or one (1) additional~~] EMT instructor;

(c) In the absence of the lead instructor, lessons shall not be conducted without the presence of an EMT-instructor certified by the cabinet;

(d) Is [~~(4) Have, prior to commencement of the class, a class number assigned by the cabinet;~~

~~(5) Be~~] limited to twenty-eight (28) [~~thirty (30)~~] students; and

(e) Utilizes texts as chosen by the lead instructor and approved by the implementing agency.

(7) Approved texts shall be:

(a) Currently in publication;

(b) The most current edition available at the time the course begins which meets the appropriate 1984 or 1994 NSC;

(c) Maintained on file in the office of the implementing agency and at the course location; and

(d) Available upon request for public inspection during normal office hours or during course hours.

(8) [~~(6)~~] Utilize equipment, [~~texts,~~] audiovisuals and other materials approved by the cabinet;

(9) [~~(7)~~] Have all required equipment available at the training site for the scheduled lessons and not permit sharing of equipment between courses [~~classes~~] unless [~~the classes are conducted at the same location and~~] the equipment is equally available to all course lessons as needed [~~classes~~]; and

(10) [~~(8)~~] Not permit a student to be on call while course lessons [~~classes~~] are in session.

Section 2. Responsibilities of the Lead Instructor. (1) The EMT course lead [~~class~~] instructor shall:

(a) Require each student to sign in, on the same date as the lesson to be presented, on an attendance sheet approved [~~provided~~] by the cabinet;

(b) Submit to the cabinet, at least two (2) weeks prior to the starting date of the class:

1. A syllabus for the course showing course lesson dates and the materials to be covered; and

2. [~~,~~] A "Basic Course Inventory" form (12/93) verifying that all equipment, texts, audiovisuals [~~television tapes~~], and other materials specified are on hand, in proper working order and available as specified in Section 1(8) of this administrative regulation; [~~placed in secure storage;~~]

(c) Submit to the cabinet, within two (2) weeks following the completion of each course:

1. The master "Grade Sheet", (1/96);

2. "Answer Sheets", (9/94) for each of the four (4) certification written examinations;

3. "Score Sheets for the Certification [~~Final~~] Practical Examination" for each student who completed the class;

4. "Master Attendance Sheet", (3/95);

5. "Attendance Sheet", (1/96), or cabinet approved equivalent for each lesson;

6. "Application for Emergency Medical Technician", (2/96) for each eligible student [~~for each student~~] desiring EMT certification; and

7. The fee prescribed by 902 KAR 13:030, Section 1(1) for each student desiring EMT certification.

(2)[~~(a) The following forms are incorporated by reference:~~

~~1. "Basic Course Inventory" (1992);~~

~~2. "Grade Sheet" (10/71);~~

~~3. "Answer Sheet", number one (1), two (2), three (3) and four (4) (1992);~~

~~4. "Master Attendance Sheet" (1992);~~

~~5. "Attendance Sheet" (EHS-4 9/71);~~

~~6. "Application for Emergency Medical Technician" (1992).~~

~~(b) They may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.~~

~~(3)~~] The EMT course lead [~~class~~] instructor shall:

(a) Establish, with the approval of the implementing agency, the course standards for training and examinations, including development and procurement of examination materials, and course absenteeism;

(b) Require that remediation or makeup of missed eligible lessons

be completed within the course in which the EMT is enrolled. [~~may permit more than one (1) lesson absence per student, if the absence is made up:~~

~~(a) With the approval of the instructor; or~~

~~(b) In a subsequent EMT training course provided the lesson made up is the same one that was missed.~~]

Section 3. EMT Certification Examination. (1) The cabinet shall prescribe the format and content of the EMT certification examination which shall consist of two (2) parts:

(a) [~~(1)~~] Written.

1. Until July 1, 1996, [~~(a)~~] the Kentucky certification written examination for eligible applicants trained according to the 1984 NSC EMT-Basic shall consist of four (4) separate examinations, the fourth to be inclusive of the entire course.

2. [~~(b)~~] An absolute overall passing grade of not less than eighty (80) percent, shall be required for successful completion of the written portion of the certification examination.

3. The Kentucky certification examination for eligible applicants trained according to the 1994 NSC EMT-Basic shall follow the format described in subsection (3)(a) of this section.

(b) [~~courses which begin after the effective date of this administrative regulation.~~

~~(2)~~] Practical.

1. [~~(a)~~] The applicant shall pass all required stations of the Kentucky certification [~~final~~] practical examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.

2. [~~(b)~~] If an applicant [~~he~~] fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass.

3. [~~(c)~~] If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination.

(2) [~~(3)~~] An instructor who is employed by the same ambulance service, public service or industrial organization for whom an EMT course [~~class~~] is conducted shall not evaluate in the practical examination of the students from that course [~~that class~~].

(3) The format for the EMT two (2) part examination for Kentucky initial certification for an eligible applicant who has successfully completed a 1994 NSC EMT-Basic course shall be as follows:

(a) Written.

1. The written portion of the certification examination shall be a single examination that is comprehensive and compatible with the 1994 NSC EMT-Basic, utilizing the National Registry of EMTs (NREMT) (1/96) written examination.

2. In order to be eligible for Kentucky certification, a student who has successfully completed a Kentucky 1994 NSC EMT-Basic course and is recommended as eligible to take the NREMT written examination shall obtain an absolute score according to the following schedule:

a. Prior to July 1, 1996, for an EMT Basic Pilot Program, sixty-five (65) percent;

b. Effective July 1, 1996, sixty-six (66) percent;

c. Effective January 1, 1998, sixty-eight (68) percent; and

d. Effective January 1, 1999, seventy (70) percent or whatever is equivalent to the current score required for passing the National Registry of EMTs written examination.

3. Standards and eligibility for retesting of the written examination shall be consistent with the rules and regulations of the NREMT.

(b) Practical.

1. The Kentucky practical skills portion of the initial certification examination shall be compatible with the 1994 NSC EMT-Basic, utilizing the 1994 NREMT EMT-Basic Practical Examination Users Guide for the practical examination.

2. An eligible student who passes the practical examination according to the NREMT guidelines and passes the written examination referenced in paragraph (a)2 of this subsection shall be eligible for Kentucky EMT certification.

3. Standards and eligibility for retesting of the practical skills examination shall be consistent with the rules and regulations of the NREMT.

(4) An EMT student, who does not become Kentucky certified within two (2) years after completion of the EMT course, shall repeat the EMT course before he may become Kentucky certified.

Section 4. Expiration of Certification. (1) An EMT certificate shall expire two (2) years from the date of issuance.

(2) Upon expiration of certification, an EMT shall not perform any of the authorized procedures for certified EMTs described in 902 KAR 13:080, until he has met the conditions described in Section 9 of this administrative regulation and has been recertified by the cabinet as evidenced by having been issued a new certificate by the cabinet.

Section 5. Recertification and Continuing Education Requirements. (1) During his period of certification, an EMT shall attain at least twenty-four (24) continuing education hours, with no less than twelve (12) hours being practical skills in a structured instructional setting. [~~Effective July 1, 1992,~~] A minimum of two (2) of the twenty-four (24) contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education as required by KRS 214.610.

(2) An EMT shall:

(a) Maintain evidence in the form of a certificate of completion of current training [~~of current certification~~] in cardiopulmonary resuscitation (CPR) as required by:

1. The American Heart Association; or

2. The American National Red Cross; or

3. The National Safety Council; and

(b) Submit evidence of continuing education and a current certificate of completion in CPR training [~~certification~~] to the cabinet prior to the expiration of his EMT certification.

(3) An applicant for EMT recertification shall receive credit for completion of continuing education on a subject:

(a) Covered by the United States Department of Transportation basic emergency medical technician curriculum, outlined in Section 1 of this administrative regulation; or

(b) For which instruction is:

1. Preapproved; and

2. Authorized by the cabinet.

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) Training received as a requirement for continuing education as a physician, registered nurse, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for continuing education credit if it meets the criteria of subsection (3) [~~(2)~~] of this section.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least six (6) different subject areas, with a maximum of four (4) hours per subject area, of emergency medical technician course lecture subject matter [~~instruction~~] or practice of skills [~~instruction~~].

(7) Hours earned in a transition course, as described in Section 12(1) of this administrative regulation, may be applied toward renewal of certification for an EMT who either:

(a) Attends the entire minimum twenty-five (25) hour transition course, but does not successfully pass the accompanying practical skills examination. These hours may be utilized hour for hour toward the required twenty-four (24) continuing education hours described in subsection (1) of this section, except that these hours shall not apply toward the required two (2) hours of cabinet approved AIDS educa-

tion. Additionally, these hours shall not apply as credit for update training to the 1994 NSC referenced in Section 12(1) of this administrative regulation; or

(b) Attends the entire minimum twenty-five (25) hour transition course and successfully passes the accompanying practical skills examination may utilize the hours earned in the transition course as described in paragraph (a) of this subsection, and may additionally receive credit for the required update training to the 1994 NSC; or

(c) Attends the minimally required first two (2) modules, "Introduction" and "Patient Assessment", of the minimum twenty-five (25) hour transition course, successfully completes the eleven (11) psychomotor competency objectives, and successfully passes the accompanying practical skills examination may:

1. Apply the hours hour for hour for the first two (2) modules, and any additional modules attended when the total hours attended are less than twenty-five (25) hours; and

2. Receive credit for update training referenced in paragraph (b) of this subsection.

(8) An EMT shall be issued a certificate of completion, signed by the lead instructor, which specifies the hours earned as outlined in subsection (7)(a), (b), or (c) of this section.

(9) An [~~(7)(a) The~~] EMT shall submit to the cabinet:

(a) A signed "Application for Emergency Medical Technician and EMT-Instructor Certification Renewal"; and

(b) A signed record of his continuing education on an "EMT Official Record of Continuing Education/Inservice" (EMT/R-90) form which:[~~.~~

~~(b) The form shall:~~]

1. Has been [~~Be~~] signed by the EMT;

2. Contains a certification as to the truth of the information supplied; and

3. Includes a statement that misrepresentation of the information may be cause for suspension or loss of certification.

[~~(c) "EMT Official Record of Continuing Education/Inservice", (EMT/R-90), is incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m. Monday through Friday.~~]

(10) [~~(8)~~] The following shall not be eligible for credit as continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

(b) Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians.

(11) Upon the effective date of this administrative regulation, an EMT applicant for Kentucky certification renewal shall be deemed as meeting the Kentucky certification requirements addressed in subsections (1) and (6) of this section if he:

(a) Is able to validate that he has currently met the renewal requirements for the NREMT;

(b) Meets the Acquired Deficiency Syndrome (AIDS) education required by KRS 214.610, subsection (2) of this section; and

(c) Meets the requirements outlined in Section 12 of this administrative regulation.

Section 6. EMT Instructors for Continuing Education. (1) The following persons shall be qualified to conduct continuing education courses for emergency medical technicians:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the cabinet;

(e) An instructor who:

1. Is certified by a state or federal agency to teach a subject; and

2. Teaches a course which qualifies for emergency medical technician in-service training or continuing education; or

(f) Other presenters who are preapproved by the cabinet as persons who are uniquely qualified by experience or education.

(2) As applicable, a physician, registered nurse, paramedic or emergency medical technician instructor currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section.

Section 7. Cardiopulmonary Resuscitation Requirement. (1) During the two (2) year certification period, the EMT shall maintain current training [~~certification~~] in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted[~~:~~

~~1.~~] by, or under the authority of:

1. The American Heart Association; [~~or~~]

2. The American National Red Cross; or

3. The National Safety Council; or

4. [~~2.~~] By an instructor certified by the American Heart Association or the American National Red Cross; or

5. [~~3.~~] By an instructor certified by the National Safety Council;

(b) The course shall be:

1. Taught for record; and

2. Certified by the instructor as meeting all applicable standards of the organization to:

a. The American Heart Association; or

b. The American National Red Cross; or

c. The National Safety Council. [~~as meeting all applicable standards of the organization;~~]

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children; and

7. Barrier [~~Mouth~~] to mouth, barrier [~~mouth~~] to nose or barrier [~~mouth~~] to stoma resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1)(c) of this section.

(2) The applicant for renewal of certification shall forward to the cabinet a copy of both sides of the certificate of completion issued to him indicating successful completion of the CPR course as required in Section 5(2)(b) [~~(1)(d)~~] of this administrative regulation.

Section 8. Continuing Education Requirements for Emergency Medical Technician Instructors and Instructor Trainers. (1) An EMT instructor and an EMT instructor trainer shall attain twenty-four (24) continuing education hours during his certification period.

(2) An emergency medical technician instructor or instructor trainer may meet the continuing education requirements for recertification by:

(a) Conducting an emergency medical technician course;

(b) Teaching one (1) or more lessons of an emergency medical technician course;

(c) Teaching one (1) or more lessons of an in-service training or continuing education course;

(d) Evaluating an EMT certification [~~Conducting a final~~] practical examination [~~or challenge examination for an emergency medical technician course~~]; or

(e) Conducting an EMT instructor training course.

(3) During his two (2) year certification period an emergency medical technician instructor or instructor trainer shall attend:

(a) At least one (1) annual emergency medical technician

instructor conference; or

(b) At least one (1) annual training session for newly appointed instructors.

(4) Continuing education hours obtained at these conferences may be used as credit toward the time required in subsection (2) of this section.

(5) An emergency medical technician instructor or instructor trainer shall meet the CPR requirement in one (1) of the following ways:

(a) Meet the cardiopulmonary resuscitation requirement outlined in Section 7(1) of this administrative regulation;

(b) Teach a cardiopulmonary resuscitation course for record; or

(c) Teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students.

Section 9. [~~Temporary Extension of~~] Certification Renewal. (1) All requirements of certification renewal, including [~~Upon submission of a written request prior to the certification expiration date, an EMT or EMT instructor may be granted one (1) six (6) month extension per certification period. Six (6) months following the effective date of this administrative regulation, the cabinet shall grant only a thirty (30) day grace period following a certification expiration date to allow for administrative processing.~~

~~(2)~~] continuing education hours, shall be obtained prior to the certification expiration date.

(2) Effective January 1, 1997, if all requirements were met prior to the certification expiration date of the applicant, a recertification application postmarked to the cabinet or received by the cabinet within three (3) months after the certification expiration date of the applicant may be considered for renewal.

(3) Effective January 1, 1997, an application for recertification postmarked to the cabinet or received by the cabinet more than three (3) months after the certification expiration date of the applicant shall not be considered for renewal and shall be returned to the applicant.

(4) [~~(3)~~] Upon written application to the cabinet, an EMT or EMT instructor who is a member of a National Guard or military reserve unit and who is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, may be given an extension for a period up to one (1) year after the individual's release from active duty or return to the United States, whichever occurs first.

(5) [~~(4)~~] An EMT who has not renewed his EMT certification within the time limitations specified in subsection (1) or (2) of this section may be eligible for certification by:

(a) Successfully completing the reentry challenge examination as outlined in Section 10 of this administrative regulation; or

(b) By retaking and successfully completing the entire EMT training course.

Section 10. Challenge Examination Procedure. (1) For those persons specified in subsection (3) of this section, a challenge examination may be taken in order to qualify or requalify the person as an EMT [~~emergency medical technician~~]. This challenge examination shall be in lieu of the requirement for completion of the Kentucky EMT course and the passing of the Kentucky EMT examinations. The provisions of this section shall not prohibit a [~~any~~] person listed in subsection (3) of this section from taking and successfully completing the Kentucky EMT course and the Kentucky EMT examinations.

(2) The cabinet shall prescribe the format and content of the EMT challenge certification examination which shall consist of two (2) parts:

(a) Written.

1. The Kentucky challenge written certification examination shall consist of one (1) examination inclusive of the entire EMT basic course curriculum content.

2. An absolute overall passing grade of not less than eighty (80) percent, shall be required for successful completion of the written portion of the challenge certification examination. The challenge candidate shall successfully complete the written certification examination before being eligible to take the certification practical examination.

3. If an applicant fails to pass the written examination, the applicant may be allowed one (1) retest, which shall be completed within thirty (30) days from the completion of the first testing.

4. Effective July 1, 1996, the initial EMT certification written examination for a challenge candidate shall utilize the NREMT written examination as referenced in Section 3(3)(a) of this administrative regulation.

(b) Practical.

1. The applicant shall pass all required stations of the Kentucky challenge practical certification examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.

2. If an applicant fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass.

3. If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination.

4. Effective July 1, 1996, the initial EMT certification challenge practical skills examination shall utilize the NREMT skills examination as referenced in Section 3(3)(b) of this administration regulation.

[~~(2) The standards for the Kentucky Challenge Examination shall be the same as the standards for the EMT certification examination outlined in Section 3 of this administrative regulation.~~]

(3) The following shall be eligible to take the Kentucky Challenge Examination:

(a) U.S. military personnel on active duty, or within a period of one (1) year from the date of discharge, who submit:

1. Proof of having successfully completed training equivalent to the Department of Transportation EMT curriculum outlined in Section 1 of this administrative regulation; and

2. Proof of current CPR certification.

(b) An EMT certified or licensed in another state or country, who submits proof of current EMT certification, or foreign equivalent, and CPR certification. An out-of-state or foreign license or certification shall be maintained current until the date of the first attempt to pass the practical skills examination.

(c) An EMT whose Kentucky certification has not been expired for more than five (5) years and who was in good standing when his certification expired.

(d) A challenge applicant, who does not become Kentucky certified within two (2) years from the date the cabinet receives his application to challenge, shall repeat the EMT course before he may become Kentucky certified.

(e) An applicant shall be exempt from the challenge examination requirements and shall be eligible for direct reciprocity for initial Kentucky certification if he:

1. Meets the eligibility requirements in this subsection;

2. Submits evidence of current NREMT registration; and

3. Meets the requirements of subsection (6)(b) of this section related to AIDS education required by KRS 214.610;

(f) An applicant who is not eligible for the exemption outlined in Section 12(3) of this administrative regulation shall have until July 1, 1999 to complete the requirements of Section 12 of this administrative regulation.

(4) An applicant [~~application~~] for the Kentucky Challenge Examination shall submit:

(a) A letter of request to take the examination;

(b) The fee prescribed by 902 KAR 13:030, Section 1(2); and

(c) A completed "Application for Emergency Medical Technician Challenge Only", (1992).

(5) ~~[The "Application for Emergency Medical Technician Challenge Only" form (1992) is incorporated by reference and may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.~~

~~(6)~~] An applicant whose Kentucky emergency medical technician certification has not been expired for more than five (5) years and who was in good standing when his certification expired, shall submit the following additional documentation at the time of application:

(a) Proof of previous Kentucky emergency medical technician certification; and

(b) Proof of current CPR certification which meets the requirements of Section 7(1)(a) and (b) of this administrative regulation; and

(c) Proof of having completed four (4) hours of MAST Trouser training, taught by an instructor who meets the criteria in Section 6 of this administrative regulation; and

(d) Proof of completion of at least twenty-four (24) hours of continuing education taught by an instructor who meets criteria in Section 6 of this administrative regulation.

(6) [~~(7)~~] Continuing education hours shall include:

(a) A minimum of one (1) hour in each of the following areas:

1. Airway management;
2. Diabetic emergencies;
3. Cardiovascular emergencies;
4. Multiple trauma;
5. Overdose and poisoning;
6. EMS related legal issues; and
7. Patient assessment.

(b) No less than two (2) continuing education hours in Acquired Immune Deficiency Syndrome (AIDS) education equivalent to the requirement specified in Section 5(1)(b) of this administrative regulation.

Section 11. Exemptions from EMT Administrative Regulations. The Kentucky certification requirements for an EMT shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT certified in another state who comes into Kentucky:

(a) To transport patients into or through the state; or

(b) For the purpose of returning a patient to his out-of-state residence.

Section 12. Kentucky EMT Transition Course. (1) The EMT update training to the 1994 NSC, the United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program", shall be referred to as the Transition Course (TC).

(2) The TC shall be completed by July 1, 1999 by EMTs currently certified in Kentucky who completed their EMT basic training in a course initiated prior to July 1, 1996.

(3) If a Kentucky certified EMT who also holds out-of-state certification can provide evidence that he has completed equivalent training in another state prior to July 1, 1999, he may be exempt from the Kentucky TC in part, or in its entirety based upon the equivalency training he has received.

(4) The TC shall not be required of EMTs currently certified in Kentucky who completed their EMT basic training in a Kentucky 1994 NSC EMT- Basic Pilot Program course prior to July 1, 1996.

(5) The TC shall be coordinated by a sponsoring agency or organization such as a Kentucky EMT training implementing agency, licensed ambulance service, acute care facility, or other agency or organization approved by the cabinet.

(6) A sponsoring agency shall have filed an application, "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95) if it has not been already approved.

(7) If an agency has already been approved to sponsor a TC, the agency shall have filed a "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians", (10/95).

(8) An agency shall:

(a) File an application to sponsor a TC at least two (2) weeks prior to the planned starting date of the course; and

(b) Have received approval from the cabinet for coordinating the training.

(9) An approved sponsoring agency shall assume all responsibilities for conducting the TC.

(10) The TC course shall:

(a) Have, prior to the commencement of the course, a course number assigned by the cabinet;

(b) Be at least twenty-five (25) hours in duration except for the alternatives outlined in Section 5(7)(c) of this administrative regulation. This shall not include time for the course practical examination;

(c) Be limited to twenty-eight (28) certified EMT students;

(d) Utilize texts as outlined in Section 1(5)(d) and (6) of this administrative regulation, which are compatible with the 1994 NSC;

(e) Meet cabinet requirements regarding supplies, equipment and other materials, which shall be available when needed during course lessons and as needed for skills practice and examination by the enrolled EMTs.

(f) Not permit an enrolled EMT to be on call while classes are in session;

(g) Not permit an enrolled EMT to take the course practical skills examination if the EMT has not completed the eleven (11) course psychomotor skills and objectives before the scheduled examination;

(h) Have a designated lead instructor for lectures who:

1. Is an EMT-Instructor certified by the cabinet; and

2. Has completed a Kentucky EMT-Instructor roll-out training program on the 1994 NSC;

(i) Have a minimum ratio of one (1) faculty, including lead instructor and assistants, to seven (7) enrolled EMTs for skills practice sessions; and

(j) Have assistants to the lead instructor who shall:

1. Assist the lead instructor in the skills practice sessions of the course; and

2. Assist as an evaluator for the course practical examination.

(11) The assistants to the lead instructor shall meet at least one (1) of the following requirements:

(a) Be an EMT-instructor certified by the cabinet who has completed the requirements outlined in 902 KAR 13:070, Section 4;

(b) Be a physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) Be a Kentucky certified paramedic who has successfully completed a TC who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree; or

(d) Be a Kentucky licensed registered nurse who has completed a TC and is a certified emergency nurse or has evidence of three (3) consecutive years experience in an acute medical facility emergency department who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree.

(12) The lead instructor shall be required to:

(a) Assist the sponsoring agency in filing an application for

cabinet approval to conduct each TC;

(b) Maintain the following records for each enrolled EMT. These records shall remain as property of the sponsoring agency for a period of at least five (5) years or until July 1, 2004, whichever comes first:

1. Lesson attendance;

2. Required remediation;

3. Validation of competency for eleven (11) psychomotor skill objectives before an EMT is allowed to take the accompanying course practical skills examination;

4. A copy of the cabinet TC master attendance form. The original shall be submitted to the cabinet;

5. A copy of the cabinet master grade sheet. The original shall be submitted to the cabinet; and

6. The results of the course skills station examination. The original completed score sheets shall be submitted to the cabinet.

(c) Provide a certificate of completion to each EMT which specifies the hours earned toward certification renewal and if the TC was successfully completed by passing the accompanying skill examination;

(d) Assure that the accompanying course skill examination shall be administered as follows:

1. With at least two (2) evaluators assigned per station, the enrolled EMT shall pass one (1) skill station featuring patient assessment and intervention.

2. The skill station shall be designed to test one (1) or more skills. On the date of the examination, the EMT shall randomly choose whether the station to be tested shall feature a medical or trauma patient condition, and at the same time the EMT shall randomly choose the scenario which shall be tested.

3. At the completion of the skill examination, the EMT shall not be informed of his pass or fail status. After all enrolled EMTs who are eligible to test have completed the testing process, all participating evaluators shall meet to review all skill testing results and shall determine the pass or fail status of each EMT as a consensus from all evaluators.

(13) If an EMT fails to pass the required station, the EMT shall be permitted one (1) opportunity to retest the same medical or trauma patient condition station which he failed, but he shall randomly choose the scenario on the date of the retest. The retest shall be administered by the same agency that sponsored the TC in which the EMT was enrolled, but the two (2) evaluators shall not be the same two (2) evaluators who evaluated the EMT during the first examination.

(14) If an EMT again fails to pass the required skill station examination, he shall be required to retake the entire TC before being eligible for reexamination.

(15) Until July 1, 1999, an EMT may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.

(16) An EMT who has not been successful in passing the skill examination retest on the second attempt by July 1, 1999, shall not be eligible for Kentucky EMT certification renewal.

Section 13. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied, unless prohibited by copyright, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

(1) The United States Department of Transportation "1984 Emergency Medical Technician: National Standard Curriculum", (Third Edition).

(2) The United States Department of Transportation, National Highway Traffic Administration, "1994 National Standard Curriculum, Emergency Medical Technician-Basic".

(3) The "Emergency Medical Technician Basic Course Inventory Pilot Program" form (10/95).

(4) The "Emergency Medical Technician Basic Course Inventory" form (12/93).

(5) The master "Grade Sheet (1/96)".

(6) "Kentucky EMT Examination Answer Sheet", number one (1), two (2), three (3), and four (4) (9/94).

(7) The "Master Attendance Sheet" (3/95).

(8) The "Attendance Sheet" (EMS Branch -01/96).

(9) The "Application for Emergency Medical Technician", (2/96).

(10) The "National Registration, Registered EMT-Basic", (1/96), published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229.

(11) The "1994 National Registry of EMT-Basic Practical Examination Users Guide" published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229.

(12) The "EMT Official Record of Continuing Education/Inservice" (EMT/R 92).

(13) The "Application for Emergency Medical Technician/Emergency Medical Technician-Instructor Certification Renewal" (2/96).

(14) The "Application for Emergency Medical Technician Challenge Only" (EMS Branch-2/96).

(15) The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program".

(16) The application "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95).

(17) The "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians" (10/95).

(18) The "1994 EMT-Basic Transition Course Equipment Requirements" (10/95).

(19) The "Participant Competency Record Kentucky EMT-Basic Transition Course" (10/95).

(20) The "Master Attendance Sheet EMT-Basic Transition Course", (10/95).

(21) The "Emergency Medical Technician Transition Course Master Grade Sheet", (10/95).

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 14,000 emergency medical technicians, of whom approximately 975 are paramedics, 244 are emergency medical technician instructors and 15 are emergency medical technician instructor trainers.

(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. This administrative regulation will have no effect on the cost of doing business in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation, when implemented, will have no effect on the cost of doing business in any geographical area within the state.

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

1. First year following implementation: It is unknown what increase will be observed in cost to staff in overtime during the first half of the first year, as the transition course is implemented (plan to divide the increased administrative responsibilities between two to four existing departmental staff). Slight increase in administrative costs will likely become more evident during the second half of the first year.

2. Second and subsequent years: As the second year approaches, there may be a necessity to add a seasonal part time or permanent part time clerical or secretarial type person to support the extra work to be assumed by existing departmental staff. It will take a 3 to 4-year process to update the approximately 14,000 emergency medical technicians (EMTs) to the 1994 EMT basic revised curriculum. The pilot studies of the revised curriculum and the updating of existing certified EMTs via the transition course needs to commence before implementing the revised curriculum statewide. They will need to continue concurrently thereafter, in order to reduce the exposure of newly trained EMTs working alongside currently certified EMTs who have not been updated to the revised curriculum. It can only be determined during the progression of the transition course implementation as to additional staff needs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: Will increase staff time to review and process the additional course applications and course completion records.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: There may be some effect on state or local revenues attributable to the requirements of this administrative regulation. Approximately 10 local government operated ambulance services are cabinet approved EMT training agencies. There are approximately 100 local governments that are not EMT training agencies, but may provide some or total subsidy of the cost for training their volunteer EMT personnel as a service benefit. Depending on the creativity of the local governments to solicit additional outside funding sources, the impact could be anywhere from nominal to an approximate cost of $100 per EMT for the transition course training of their personnel.

(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: A Notice of Intent Hearing was held on this proposed administrative regulation on January 30, 1996. No comments were received related to economic impact. This administrative regulation may impose an economic impact on the general public (for example, there could be an increase in charges to the patient due to the updated training of EMTs and the additional services they will be trained to provide becoming more costly for an EMS provider to make available).

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The proposed methods are compatible with methods for nationwide implementation of the revised EMT basic curriculum.

(8) Assessment of expected benefits: The revised curriculum is projected to result in improved patient care outcomes. Pilot testing and update training of currently certified EMTs will promote a less disruptive transition phase for planning statewide implementation of the revised curriculum.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health services will be enhanced through updated training of emergency medical technicians.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: To withhold implementation could result in backward progress for Kentucky.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation addresses and establishes different requirements necessary to obtain training and certification for various levels of emergency medical technicians.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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

3. State the aspect or service of local government to which this administrative regulation relates. Emergency medical technicians who work as paid or volunteer employees for the local government operated ambulance service.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation will affect approximately ten (10) local government operated ambulance services that are cabinet approved EMT training agencies. Also there are approximately 100 local governments that are not EMT training agencies, but they may provide some or total subsidy of the cost for training their volunteer EMT personnel as a service benefit. Depending on the creativity of the local governments to solicit additional outside funding sources, the impact could be anywhere from nominal to an approximate cost of $100 per EMT for the transition course training of their personnel.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Health Systems Development
(Amendment)

902 KAR 13:070. EMT-instructors and EMT-instructor trainers.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964, EO 95-79
NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt administrative [~~rules and~~] regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for attaining certification as an EMT [~~emergency medical technician.~~] instructor and EMT- [~~emergency medical technician~~] instructor trainer.

Section 1. Emergency Medical Technician Instructor. A person shall be certified [~~not hold himself out~~] as an EMT-instructor if [~~unless~~] he has:

(1) Been certified as an EMT by the cabinet;

(2) [~~Been recommended by a certified EMT-instructor as having outstanding ability in the EMT field;~~

~~(3) Attended an approved EMT training seminar and successfully passed a written proficiency examination;~~

~~(4)~~] Assisted a Kentucky [~~an~~] EMT-instructor for a minimum of one (1) complete EMT basic training course in which he:

(a) Participated in the conduct of each lesson;

(b) Conducted, under supervision of the course lead EMT-instructor, at least one (1) complete lesson during the course;

(c) Served as a small-group assistant to the course lead EMT-instructor during practical skill exercises;

(d) Conducted class demonstrations of manipulative skills;

(e) Performed other related duties as directed by the course lead EMT-instructor;

(f) Was [~~Been~~] recommended for final evaluation, in writing to the cabinet, [~~for final evaluation~~] by the lead EMT-instructor whom the candidate [~~applicant~~] assisted in teaching the complete EMT basic training course; and

(g) Assisted throughout an EMT basic course that was completed no more than one (1) year prior to the date of the written recommendation submitted by the EMT-instructor.

(3) Has [~~(5)~~] been evaluated by a panel of EMT-instructor trainers; [~~and~~]

(4) Has [~~(6)~~] received an evaluation score of no less than an absolute eighty (80) percent [~~or higher~~];

(5) Has attended a later scheduled annual training session for EMT-instructor candidates who have successfully completed the requirements outlined in subsections (1) through (4) of this section; and

(6) Has completed an application for EMT-instructor certification.

Section 2. Reevaluation of EMT Instructor Candidates [~~trainees~~] by Panel. (1) If an EMT-instructor candidate [~~trainee~~] fails to score at least eighty (80) percent [~~or higher~~] on his initial evaluation, he shall be given another opportunity, upon application, to be reevaluated.

(2) An EMT-instructor candidate who fails to score at least eighty (80) percent on the second attempt [~~trainee~~] shall, upon application, be given another opportunity to be reevaluated if he:

(a) Drops out for a year, or one (1) evaluation course, if more than one (1) is held in a given year;

(b) Reapplies by having a current recommendation for evaluation submitted in writing by the lead EMT-instructor for whom the EMT-instructor candidate has assisted throughout an entire EMT basic course; and

(c) Assisted throughout an EMT-basic course that was completed no more than two (2) years previous to the date of the updated written recommendation submitted by the lead EMT-instructor. [~~Again fails to obtain a score of eighty (80) percent or higher; and~~

~~(b) Scores at least seventy (70) percent or higher.~~]

(3) A candidate who is not successful on two (2) attempts, but reapplies after meeting the requirements of subsection (2)(a), (b), and (c) of this section shall be allowed two (2) additional attempts to successfully complete the EMT-instructor evaluation course.

Section 3. Certification of an EMT-instructor-trainers. A person shall not be certified as an EMT-instructor-trainer unless he has:

(1) Complied with all requirements of Section 1 of this administrative regulation; and

(2) Been evaluated by the Kentucky EMS Council [~~advisory committee~~] and recommended to the cabinet for certification as an EMT-instructor-trainer.

Section 4. Renewal of EMT-instructor Certification. (1) If the certification of an EMT-instructor is not renewed, it shall become invalid two (2) years from the date of issue. In order to obtain renewal, the EMT-instructor shall meet all requirements of 902 KAR 13:050, Section 8 [~~5(4)~~].

(2) Effective July 1, 1996, a Kentucky (KY) EMT-instructor who was certified prior to that date shall have completed a 1995 Kentucky EMT-Instructor Roll-Out Training Program on the 1994 National Standard Curriculum (NSC) EMT Basic. A Kentucky certified EMT-instructor who:

(a) By July 1, 1996 has not completed a 1995 Kentucky EMT-Instructor Roll-Out Training Program on the 1994 NSC EMT Basic shall not be authorized to:

1. Teach an EMT basic course;

2. Teach an EMT continuing education class;

3. Serve as an EMT certification practical skills evaluator; or

4. Serve as a lead instructor or assistant to the lead instructor, or evaluate the accompanying practical skills examination for an EMT transition course as outlined in 902 KAR 13:050, Section 12; and

(b) By July 1, 1996 is found deficient as outlined in paragraph (a) of this subsection shall be an instructor whose Kentucky EMT-instructor certification is not eligible for renewal on the date of their certification expiration.

(3) After the last scheduled 1995 KY EMT-Instructor Roll-Out Training Program, a candidate accepted for evaluation in 1996 shall not be eligible for EMT-instructor certification until he has:

(a) Successfully completed a KY EMT transition course as outlined in 902 KAR 13:050, Section 12; and

(b) Completed the requirements of Sections 1 and 2 of this administrative regulation. The conference referenced in Section 1(5) of this administrative regulation shall include the methods of instruction related to the 1994 NSC.

(4) Effective January 1, 1997, future candidates eligible for evaluation shall have:

(a) Met the requirements in Section 1(2) of this administrative regulation by participating in an EMT basic course conducted according to the 1994 NSC; and

(b) Completed the requirements in subsection (3)(a) of this section.

(5) An instructor who obtained Kentucky EMT-instructor certification prior to July 1, 1996 and whose certification is not eligible for renewal due to the conditions outlined in subsection (2)(a) of this section, may regain certification status if:

(a) He repeats the requirements of Section 1 and 2 of this administrative regulation; and

(b) The EMT course in which he assisted was in accordance with the 1994 NSC EMT Basic.

(6) A Kentucky EMT-instructor who is denied renewal of his certification for having not met the requirements in subsection (2)(a) of this section, may request an administrative hearing in accordance with the guidelines specified in 902 KAR 13:090, Section 5.

Section 5. [~~EMT~~] Instructors Certified in Other States. A person who is certified in another state as an EMT-instructor and who wishes to become certified in Kentucky as an EMT-instructor, shall:

(1) Comply with the challenge examination procedures outlined in 902 KAR 13:050, Section 10 [~~requirements of Sections 1 and 2 of this administrative regulation~~]; and

(2) Comply with the requirements of Sections 1 and 2 of this administrative regulation. [~~challenge examination procedures outlined in 902 KAR 13:050, Section 7.~~]

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 244 emergency medical technician instructors, of whom 15 are emergency medical technician instructor trainers. They will be responsible for updating approximately 14,000 certified EMTs to the revised EMT curriculum via the transition course. Some will also serve as instructors in cabinet approved pilot program evaluations of the revised 1994 EMT basic curriculum before it is implemented statewide.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. A Notice of Intent public hearing was held on this proposed administration on January 30, 1996. No comments were received related to cost of living and employment. However, this administrative regulation will have no effect on the cost of doing business in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A Notice of Intent public hearing was held on this proposed administration on January 30, 1996. No comments were received related to cost of doing business This administrative regulation, when implemented, will have no effect on the cost of doing business in any geographical area within the state.

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

1. First year following implementation: It is unknown what increase will be observed in cost to staff in overtime during the first half of the first year, as the transition course is implemented (plan to divide the increased administrative responsibilities between two to four existing departmental staff). Slight increase in administrative costs will likely become more evident during the second half of the first year.

2. Second and subsequent years: As the second year approaches, there may be a necessity to add a seasonal part time or permanent part time clerical or secretarial type person to support the extra work to be assumed by existing departmental staff. It can only be determined during the progression of the transition course implementation as to additional staff needs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: Will increase staff time to review and process the additional course applications and course completion records.

(b) Reporting and paperwork requirements: As above.

(4) Assessment of anticipated effect on state and local revenues: There may be some effect on state or local revenues attributable to the requirements of this administrative regulation. Approximately 10 local government operated ambulance services are cabinet approved EMT training agencies. There are approximately 100 local governments that are not EMT training agencies, but may provide some or total subsidy of the cost for training their volunteer EMT personnel as a service benefit. Depending on the creativity of the local governments to solicit additional outside funding sources, the impact could be anywhere from nominal to an approximate cost of $100 per EMT for the transition course training of their personnel.

(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: A Notice of Intent Hearing was held on this proposed administrative regulation on January 30, 1996. No comments were received related to economic impact. However, there could be an increase in charges to the patient due to the updated training of EMTs and the additional services they will be trained to provide becoming more costly for an EMS provider to make available).

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The proposed methods are compatible with methods for nationwide implementation of the revised EMT basic curriculum.

(8) Assessment of expected benefits: The revised curriculum is projected to result in improved patient care outcomes. Pilot testing and update training of currently certified EMTs will promote a less disruptive transition phase and more cost effective methods for planning statewide implementation of the revised curriculum.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health services will be enhanced through updated training of emergency medical technicians.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: To withhold implementation could result in backward progress for Kentucky.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation addresses and establishes different requirements necessary to obtain training and certification for various levels of emergency medical technicians.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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

3. State the aspect or service of local government to which this administrative regulation relates. Emergency medical technicians who work as paid or volunteer employees for the local government operated ambulance service.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation will affect approximately ten (10) local government operated ambulance services that are cabinet approved EMT training agencies. Also there are approximately 100 local governments that are not EMT training agencies, but they may provide some or total subsidy of the cost for training their volunteer EMT personnel as a service benefit. Depending on the creativity of the local governments to solicit additional outside funding sources, the impact could be anywhere from nominal to an approximate cost of $100 per EMT for the transition course training of their personnel.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Health Systems Development
(Amendment)

902 KAR 13:080. Authorized procedures.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 211.964, EO 95-79

NECESSITY AND FUNCTION: EO 95-79, effective 12-28-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services. KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt [~~rules and~~] administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT Procedures. (1) Except as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum (NSC)," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, incorporated by reference in 902 KAR 13:050, and in the accompanying texts which have been chosen by the lead instructor and approved by the implementing agency. Texts utilized shall be:

(a) Currently in publication;

(b) The most current edition available at the time the course begins. Courses initiated prior to July 1, 1996 shall utilize a text which meets the 1984 NSC standards. Pilot programs of the 1994 NSC and statewide courses initiated on or after July 1, 1996 shall utilize a text which meets the 1994 NSC standards;

(c) Maintained on file in the office of the implementing agency; and

(d) Available, upon request, for public inspection during normal office hours or during course hours. [~~entitled "Emergency Care," Fifth Edition, 1990, published by The Brady Company, Prentice Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of both publications, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday.~~]

(2) An EMT may [~~shall not~~]:

(a) [~~Perform the initiation of intravenous (I.V.) fluid infusion, but may:~~

~~1.~~] Transport a stable patient with an I.V. infusion entry point maintained patent by a heparin lock placement, to which no I.V. infusion fluid is attached;

(b) [~~2.~~] Transport interfacility or facility to home a stable patient who has a preestablished peripheral I.V. infusion; and as authorized by local medical control may perform procedures for the maintenance and, if needed, discontinuation of the preestablished peripheral I.V. infusion if he has completed [~~according to~~] the training requirements specified in 902 KAR 13:130;

(c) [~~3.~~] Transport a patient having a preestablished I.V. infusion who is encountered in a prehospital setting to the nearest appropriate medical facility based on local protocol; and

(d) [~~, but may not~~] Discontinue the preestablished I.V. infusion by closing the flow valve.

(3) An EMT shall not:

(a) Perform the initiation of intravenous (I.V.) fluid infusion;

(b) Remove a preestablished I.V. needle or catheter from a patient;

(c) [~~; or shall not:~~

~~(b)~~] Perform a cricothyrotomy;

(d) [~~(c)~~] Relieve a tension pneumothorax through the use of needles;

(e) [~~(d)~~] Insert an endotrachael airway, an esophageal obturator airway, or an esophageal gastric tube airway;

(f) [~~(e)~~] Perform external cardiac defibrillation except by use of automatic or semiautomatic defibrillation equipment authorized according to the requirements specified in 902 KAR 13:120; or

(g) [~~(f)~~] Use medical antishock trousers unless:

1. The EMT [~~He~~] has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught [~~after July 1, 1985~~]; or

2. The EMT [~~He~~] is currently certified as an emergency medical technician and has completed [~~completes the four (4) hour~~] training [~~session~~] on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. [~~The standards for such examinations shall be the same as for an EMT course.~~] The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set forth in the "Basic

Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, or effective July 1, 1996, the 1994 National Standard Curriculum EMT-Basic, which is incorporated by reference in 902 KAR 13:050, and the standards and protocols of the cabinet [~~for Human Resources~~]; or

3. The EMT [~~He~~] has completed an emergency medical technician course in another state or country which included the use of medical antishock trousers and has taken and passed[~~, as a part of his Kentucky challenge examination,~~] an examination in the use of medical antishock trousers; and

4. The EMT [~~He~~] uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

(3) An EMT who successfully completes a transition course and passes the accompanying practical skills examination, as outlined in 902 KAR 13:050, Section 12(13), may perform the procedures requiring physician medical oversight (e.g. assistance in the administration of certain prescribed medications or automatic defibrillation) if:

(a) The EMT works with a basic life support (BLS) ambulance service that:

1. Chooses to provide the procedures and has a written contract with a physician medical director, licensed to practice in Kentucky; or

2. Has an alternate method for ambulance service physician medical oversight that has been approved by the cabinet.

(b) These procedures may also be performed by an EMT who:

1. Meets the transition course requirements; and

2. Works with a public safety organization that is affiliated with a BLS ambulance service which meets the physician medical oversight requirements.

Section 2. 1994 National Standard Curriculum (NSC) EMT-Basic Pilot Program. (1) As outlined in 902 KAR 13:050, Section 1, prior to the July 1, 1996, statewide implementation of the 1994 NSC, EMT-Basic, a cabinet approved implementing agency may participate in a pilot program to conduct and evaluate the 1994 NSC EMT-Basic.

(2) Each approved pilot program shall agree to abide by the requirements of the cabinet, outlined in 902 KAR 13:050, for EMT training and certification.

(3) In addition to the requirements of the cabinet, outlined in 902 KAR 13:050, an implementing agency conducting a 1994 NSC EMT-Basic Pilot Program shall be responsible for:

(a) Establishing applicant requirements;

(b) Establishing EMT student training and examination standards; and

(c) Submitting summary reports to the cabinet as requested, but minimally at the midpoint and at the completion of the 1994 NSC Pilot Program.

(4) A student successfully completing a pilot program shall be eligible to apply for the Kentucky certification examination utilizing the National Registry of EMTs written and practical examination in lieu of the Kentucky four (4) part written examination and practical examination outlined in 902 KAR 13:050, Section 3. Scoring standards for the examination shall be consistent with the policy of the National Registry of EMTs.

(5) For a candidate who has successfully completed a Kentucky 1994 NSC EMT-Basic Pilot Program, the passing score for the Kentucky written examination utilizing the National Registry of EMTs written examination shall be sixty-five (65) percent. Scoring standards and eligibility for retesting of the National Registry of EMTs written and practical examinations shall be consistent with the policy of the National Registry of EMTs.

(6) An EMT student who completes a cabinet approved 1994 NSC EMT-Basic Pilot Program and is Kentucky certified by utilization of the National Registry examination shall be subject to the standards for disciplinary actions specified in 902 KAR 13:090.

(7) A cabinet approved 1994 NSC EMT-Basic Kentucky Pilot Program shall not be initiated after July 1, 1996 [~~EMT defibrillation Pilot Program. An EMT who has successfully completed the cabinet's ten (10) hour training course for the semiautomatic defibrillation pilot program and has successfully passed an examination consisting of both written and practical application examinations, shall be authorized to perform defibrillation procedures in accordance with the standards and protocols established by the cabinet. Such authorization shall expire on June 30, 1991. Following June 30, 1991, the pilot program EMTs may perform automatic or semiautomatic defibrillation authorized according to the requirements specified in 902 KAR 13:120.~~]

Section 3. Other Requested Pilot Programs. (1) A cabinet approved Kentucky EMT training implementing agency or Kentucky licensed ambulance service desiring to pilot test an EMT procedure not previously authorized in this administrative regulation shall:

(a) Apply to the cabinet for approval before initiating a pilot program; and

(b) Provide a written description of how the procedure shall be implemented and monitored, and how the procedure, if used by an EMT, shall benefit patient care.

(2) An agency approved by the cabinet to conduct a pilot program shall agree, in writing, to submit periodic reports to the cabinet related to the progress of the pilot program and to abide by the requirements of the cabinet.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: April 4, 1996
FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 14,000 emergency medical technicians, of whom approximately 975 are paramedics, 244 are emergency medical technician instructors and 15 are emergency medical technician instructor trainers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. A Notice of Intent Hearing was held on the proposed administrative regulation on January 30, 1996. No comments were received related to the cost of doing business in the state. However, this proposed administrative regulation will have no effect on the cost of doing business in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A Notice of Intent Hearing was held on the proposed administrative regulation on January 30, 1996. No comments were received related to the cost of doing business in

any geographical area. However, this administrative regulation, when implemented, will have no effect on the cost of doing business in any geographical area within the state.

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

1. First year following implementation: It is unknown what increase will be observed in cost to staff in overtime during the first half of the first year, as the transition course is implemented (plan to divide the increased administrative responsibilities between two to four existing departmental staff). Slight increase in administrative costs will likely become more evident during the second half of the first year.

2. Second and subsequent years: As the second year approaches, there may be a necessity to add a seasonal part time or permanent part time clerical or secretarial type person to support the extra work to be assumed by existing departmental staff. It will take a three (3) to four (4)-year process to update the approximately 14,000 emergency medical technicians (EMTs) to the 1994 EMT basic revised curriculum. The pilot studies of the revised curriculum and the updating of existing certified EMTs via the transition course needs to commence before implementing the revised curriculum statewide. They will need to continue concurrently thereafter, in order to reduce the exposure of newly trained EMTs working alongside currently certified EMTs who have not been updated to the revised curriculum. It can only be determined during the progression of the transition course implementation as to additional staff needs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: Will increase staff time to review and process the additional course applications and course completion records.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: There may be some effect on state or local revenues attributable to the requirements of this administrative regulation. Approximately 10 local government operated ambulance services are cabinet approved EMT training agencies. There are approximately 100 local governments that are not EMT training agencies, but may provide some or total subsidy of the cost for training their volunteer EMT personnel as a service benefit. Depending on the creativity of the local governments to solicit additional outside funding sources, the impact could be anywhere from nominal to an approximate cost of $100 per EMT for the transition course training of their personnel.

(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. A Notice of Intent Hearing was held on the proposed administrative regulation on January 30, 1996. No comments were received related to economic impact. There could be an increase in charges to the patient due to the updated training of EMTs and the additional services they will be trained to provide becoming more costly for an EMS provider to make available).

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The proposed methods are compatible with methods for nationwide implementation of the revised EMT basic curriculum.

(8) Assessment of expected benefits: The revised curriculum is projected to result in improved patient care outcomes. Pilot testing and update training of currently certified EMTs will promote a less disruptive transition phase and more cost effective methods for planning statewide implementation of the revised curriculum.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health services will be enhanced through updated training of emergency medical technicians.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: To withhold implementation could result in backward progress for Kentucky.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation addresses and establishes different requirements necessary to obtain training and certification for various levels of emergency medical technicians.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

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

3. State the aspect or service of local government to which this administrative regulation relates. Emergency medical technicians who work as paid or volunteer employees for the local government operated ambulance service.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation will affect approximately ten (10) local government operated ambulance services that are cabinet approved EMT training agencies. Also there are approximately 100 local governments that are not EMT training agencies, but they may provide some or total subsidy of the cost for training their volunteer EMT personnel as a service benefit. Depending on the creativity of the local governments to solicit additional outside funding sources, the impact could be anywhere from nominal to an approximate cost of $100 per EMT for the transition course training of their personnel. Additionally, this administrative regulation could affect all licensed ambulance services and potentially the general public as a result, due to the ambulance service having to increase charges to the patient because the new procedures for which the EMTs have been trained being more costly to make available. However, the revised training program is projected to result in improved patient care by the trained EMTs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

904 KAR 2:015. 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, EO 95-79

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 personal care home's [~~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) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for individuals who were aged, blind or had a disability.

(2) "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.

Section 2. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program [~~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 Supplemental Security Income Program [~~SSI~~] payment and other income for the current month.

(2) Recipients include former Aid to the Aged, Blind and Disabled Program [~~AABD~~] recipients who became ineligible for the Supplemental Security Income Program [~~SSI~~] due to income but whose special needs entitled them to an Aid to the Aged, Blind and Disabled Program [~~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 Supplemental Security Income Program [~~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

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 Supplemental Security Income Program [~~SSI~~], application for Supplemental Security Income Program [~~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; or

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 Supplemental Security Income Program [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 Supplemental Security Income Program [SSI] standard for one (1) shall be conserved for the spouse, if this spouse is a recipient of the Supplemental Security Income Program.

(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 Supplemental Security Income Program [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 [1995, $792];

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1996, $609 [1995, $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 [1995, $491];

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 [1995, $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 [1995, $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 benefits from the Supplemental Security Income Program [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 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. [~~10.~~] Persons with Mental Illness or Mental Retardation [~~(MI or MR)~~] Supplement. A certified personal care home [~~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 personal care home [~~PCH~~] shall meet the following criteria to qualify for a supplementation payment:

(1) The personal care home [~~PCH~~] shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The personal care home [~~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 personal care home [~~PCH~~] shall care for a thirty-five (35) percent mental illness or mental retardation [~~MI or MR~~] population in all of its occupied licensed personal care home [~~PCH~~] beds.

(4) The personal care home [~~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 personal care home [~~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 personal care home [~~PCH~~] may not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician [~~CMT~~] training in effect prior to July 1990, as a result of this minimum requirement.

(6) The personal care home [~~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 personal care home [~~PCH~~] shall provide the Department for Social Insurance [~~DSI~~] with its tax identification number and address as part of the application process.

(7) The personal care home [~~PCH~~] shall provide the Department for Social Insurance [~~DSI~~] with a monthly report.

(a) The report shall list:

1. All residents of the personal care home [~~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 personal care home [~~PCH~~] shall annotate the monthly report as follows:

1. A star shall indicate a resident has a mental illness or mental retardation [~~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 mental illness or mental retardation [~~MI or MR~~] diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to the Department for Social Insurance [~~DSI~~] by the fifth working day of the month.

(8) The personal care home [~~PCH~~] shall notify the Department for Social Insurance [~~DSI~~] if its mental illness or mental retardation [~~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. [~~11.~~] Training. (1) The personal care home [~~PCH~~] licensed nurse or individual who has successfully completed certified medication technician [~~CMT~~] training shall attend the mental illness or mental retardation [~~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) The mental illness or mental retardation [~~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 with a diagnosis of mental illness or mental retardation.

(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 certified medication technician [~~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 certified medication technician [~~CMT~~] training and five (5) staff have been trained, the personal care home [~~PCH~~] shall request in writing to the Department for Social Insurance [~~DSI~~] an exemption of the five (5) staff rule.

(b) The personal care home [~~PCH~~] shall have on staff a licensed nurse or individual who has successfully completed certified medication technician [~~CMT~~] training who:

1. Has received the mental illness or mental retardation [~~MI or MR~~] basic training; or

2. Is enrolled in the next scheduled mental illness or mental retardation [~~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 personal care homes [~~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 Persons with Mental Illness or Mental Retardation [~~MI or MR~~] Supplement Program 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 the Department for Social Insurance [~~DSI~~] of staff who completed the training workshop.

(7) The Department for Social Insurance [~~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 personal care home [~~PCH~~] who has applied for the Persons with Mental Illness or Mental Retardation Supplement [~~MI or MR~~] Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program [~~12. MI or MR~~] Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the personal care home [~~PCH~~] to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation [~~MI or MR~~] Supplement Program:

(a) The personal care home's [~~PCH's~~] initial Persons with Mental Illness or Mental Retardation Supplement Program [~~MI or MR~~] certification may be separate from the annual survey;

(b) The initial Mental Illness or Mental Retardation Supplement Program [~~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) A personal care home's [~~PCH's~~] annual Persons with Mental Illness or Mental Retardation Supplement Program [~~MI or MR~~] recertification may be completed during the annual licensure survey;

(d) The Department for Social Insurance [~~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 personal care home [~~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 personal care home's [~~PCH's~~] certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation [~~MI or MR~~] basic training workshop. The personal care home [~~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 certified medication technician [~~CMT~~] training demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall review the personal care home [~~PCH~~] copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program [~~MI or MR~~] certification process.

(4) If thirty-five (35) percent mental illness or mental retardation [~~MI or MR~~] population is met on the day of the visit, the personal care home [~~PCH~~] shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home [~~PCH~~] is responsible for notifying the Department for Social Insurance [~~DSI~~], within ten (10) working days, if the mental illness or mental retardation [~~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 the Department for Social Insurance [~~DSI~~] monthly identifying certified personal care homes [~~PCH~~] eligible for the Persons with Mental Illness or Mental Retardation [~~MI or MR~~] Supplement Program. 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 the Department for Social Insurance [~~DSI~~] monthly of a personal care home [~~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: April 8, 1996
FILED WITH LRC: April 9, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting

General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected:

(a) There are 5,900 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 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: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

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

(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 attending the basic training workshop 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, 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 for the agency.

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: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(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 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 government or only a part or division of the local government.

3. State the aspect or service of local government to which this administrative regulation relates.

4. How does this administrative regulation affect the local government or any service it provides?

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 47.011, 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39), PL 103-66 §13736, 13742, "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT-94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Families and Children [~~Human Resources~~] is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children [~~(AFDC)~~] Program. This administrative regulation sets forth the standards by which the need for and the amount of an aid to families with dependent children [~~AFDC~~] assistance payment is established.

Section 1. Definitions. (1) "Aid to families with dependent children (AFDC) means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity or unemployment of a parent.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3.

(a) The benefit group shall include:

1. The dependent child;

2. The child's eligible parent; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) [~~(2)~~] "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(4) [~~(3)~~] "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(5) [~~(4)~~] "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing AFDC payment. This shall include:

(a) Beginning or ending employment;

(b) Change in employers or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or

(f) Change in farm cropping arrangements or type of self-employment activities.

(6) [~~(5)~~] "Claimant" means the individual responsible for an overpayment.

(7) [~~(6)~~] "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(8) [~~(7)~~] "Deduction" means an amount subtracted from gross income to determine countable income.

(9) [~~(8)~~] "Excluded income" means income that is received but not counted in the gross income test.

(10) [~~(9)~~] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) [~~(10)~~] "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in and adult basic education [~~(ABE)~~] program, a General Educational Development [~~(GED)~~] program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time.

(12) [~~(11)~~] "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 8 [~~7~~] of this administrative regulation.

(13) "Job opportunities and basic skills (JOBS)" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(14) "Job Training Partnership Act Program (JTPA)" means a program that prepares youth and unskilled adults for entry into the labor force. Only those individuals who are certified as eligible for the program can benefit from JTPA funds.

(15) [~~(12)~~] "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(16) [~~(13)~~] "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

(17) [~~(14)~~] "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(18) [~~(15)~~] "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(19) [~~(16)~~] "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(20) [~~(17)~~] "Recoupment" means recovery of overpayments of assistance payments.

(21) [~~(18)~~] "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(22) [~~(19)~~] "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(23) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(24) [~~(20)~~] "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(25) [~~(21)~~] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (3) of this section:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Equity value up to $1,500 for one (1) motor vehicle;

(c) Basic household items essential for day-to-day living, including:

1. Furniture;

2. Appliances; and

3. Clothing.

(d) Gift or inheritance not legally available until a later date;

(e) Nonessential item with a value of less than fifty (50) dollars;

(f) All resources of a recipient of [~~supplemental security income~~ {]SSI[}] or the state supplementation program [~~(SSP)~~] living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption.

(i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit group shall agree to repay AFDC benefits received beginning with the first month of the exemption.

2. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Children's toys and bicycles;

(k) Household pets;

(l) Resources of a child excluded from the AFDC grant;

(m) Resources of an individual not receiving assistance but living in the home including:

1. The stepparent;

2. Parent or legal guardian of a minor parent;

3. The spouse of a nonresponsible specified relative; or

4. The spouse of a minor dependent child;

(n) Amount of AFDC grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.

(p) Funds in an individual retirement account [~~IRA~~], retirement or deferred compensation account during the period of unavailability;

(q) Excluded income, as specified in Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during periods of unavailability;

(s) One (1) burial space per AFDC family member;

(t) $1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to $12,000 to Aleutians and $20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;

(x) Earned income tax credit [~~(EITC)~~] payments in the month of receipt and the following month;

(y) Any payment received from the Radiation Exposure Compensation Trust Fund; and

(z) A nonrecurring lump sum [~~supplemental security income~~ {]SSI[}] retroactive payment that is made to an AFDC recipient who is not ongoing eligible for SSI, in the month paid and the next following month.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the AFDC applicant or recipient.

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the AFDC applicant or recipient's share is considered available.

(b) For bank accounts which require more than one (1) signature

for withdrawals, determine the AFDC applicant or recipient's share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine applicant or recipient's available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the applicant or recipient's share is determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the applicant or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant or recipient's name has been removed from the resource.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI;

3. Income of a sanctioned individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application.

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the assistance standard set forth in Section 8 [~~7~~] of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the benefit standard, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need for the benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the AFDC household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded and Deductions Income. All gross non-AFDC income received or anticipated to be received by the benefit group, sanctioned individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 6 [~~5~~] of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 7 [~~6~~] of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) Earnings received by a dependent child from participation in programs under the [~~Job Training Partnership Act (~~]JTPA[~~)~~] program for a period not to exceed six (6) months within a given calendar year;

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 8 [~~7~~] of this administrative regulation, for households in which a member receives a JTPA stipend;

(g) Value of United States Department of Agriculture [~~(USDA)~~] program benefits including:

1. Donated foods;

2. Supplemental food assistance received under 42 USC 1771;

3. Special food service program for children under 42 USC 1775;

4. Nutrition program for the elderly under 42 USC 3001; and

5. The monthly food stamp allotment;

(h) Reimbursement for transportation in performance of employment duties, if identifiable;

(i) The value of JOBS supportive services payments and self-initiated supportive services payments authorized under 904 KAR 2:017;

(j) Nonemergency medical transportation payments;

(k) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(l) Educational grants, loans, scholarships, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(m) Highway relocation assistance;

(n) Urban renewal assistance;

(o) Federal disaster assistance and state disaster grants;

(p) Home produce utilized for household consumption;

(q) Housing subsidies received from federal, state or local governments;

(r) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(s) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;

2. Senior health aides;

3. Senior companions;

4. Service Corps of Retired Executives [~~(SCORE)~~]; and

5. Active Corps of Executives [~~(ACE)~~];

(u) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(v) Payments from the Cabinet for Families and Children [~~Human Resources~~], Department for Social Services, for child foster care, or adult foster care;

(w) Payments made under the Low Income Home Energy Assistance Program [~~(LIHEAP)~~] under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(x) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(y) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(z) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(aa) The principal of a verified loan;

(bb) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(cc) Income of an individual receiving SSI;

(dd) The essential person's portion of the SSI check;

(ee) Income of an individual receiving mandatory or optional state supplementary payments;

(ff) The advance payment or refund of earned income tax credit [~~(EITC)~~];

(gg) Payments made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(hh) Child support received in a month for which the AFDC payment is suspended;

(ii) In-kind income;

(jj) Income of a technically ineligible child;

(kk) Payments made from the Agent Orange Settlement Fund;

(ll) AFDC back payments;

(mm) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(nn) Payments made from the Radiation Exposure Compensation Trust Fund;

(oo) Up to $2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands; and

(pp) Payments made to individuals because of their status as victims of Nazi persecution.

(2) Applicant eligibility test. Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) On or after November [~~July~~] 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving AFDC;

c. A sanctioned individual whose earned income is considered available to the AFDC household;

d. An AFDC case which would otherwise be ineligible for AFDC without the benefit of the disregard for child care; or

e. The month of application for AFDC benefits; and

2. Shall not exceed: [~~child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense beginning in the second calendar month following the month employment begins not to exceed:~~]

a. [~~1.~~] $175 per month per individual for full-time employment; or

b. [~~2.~~] $150 per month per individual for part-time employment; or

c. [~~3.~~] $200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. These deductions shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Deductions from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in the employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would

be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or

5. The child care arrangement is terminated through no fault of the applicant or recipient; or

6. The available child care does not meet the needs of the child, for example, a disabled child; or

7. The parent is temporarily absent from work on approved educational leave; or

8. The JOBS participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls; or

9. The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section;

(c) Fails to report and increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

Section 5. Direct Child Care Payments. With the exception of those circumstances outlined in Section 4(2)(d) of this administrative regulation, on or after November 1, 1995, child care expenses incurred as a result of employment shall:

(1) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates in administrative regulation 904 KAR 2:017; and

(2) Be authorized upon the receipt of appropriate verification of the cost of care.

Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for The appropriate family size, for:

1. The support of the individual; and

2. Any other person living in the home if:

a. His needs are not taken into consideration in the AFDC eligibility determination; and

b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.

(c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;

(d) Payments for alimony or child support to a person not living in the home by the individual;

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the AFDC unit in the month received, in any subsequent month.

(3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.

(4) Resources. Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 7. [~~6.~~] Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

2. An amount equal to the AFDC assistance standard for the appropriate family size of:

a. The sponsor; and

b. Other persons living in the household:

(i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for AFDC;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less $1,500.

Section 8. [~~7.~~] Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income, as determined by the provisions of Section 8 of this administrative regulation, is subtracted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

Effective December 1, 1995 [~~July 1, 1989~~]

Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	$186 [~~162~~]	$394
2 persons	$225 [~~196~~]	$460
3 persons	$262 [~~228~~]	$526

4 persons	$328 [~~285~~]	$592
5 persons	$383 [~~333~~]	$658
6 persons	$432 [~~376~~]	$724
7 or more persons	$482 [~~419~~]	$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 9. [~~8.~~] Best Estimate. (1) The agency shall compute the benefit using its best estimate of income which will exist in the payment month.

(2) The following methods shall be used by the agency to calculate a best estimate:

(a) For cases with earned income, other than self-employment earned income:

1. The agency:

a. Shall not round cents to the nearest dollar before adding or multiplying hourly or daily earnings; but

b. Shall round cents to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, the agency shall use income from all pay periods in the preceding two (2) calendar months.

3. The agency shall determine a monthly amount by:

a. Adding gross income from each pay period:

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the agency shall compute the anticipated monthly income by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

c. Converting the resulting pay period figure to a monthly amount by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

(b) For cases with unearned income, other than unearned self-employment income, the agency shall determine a monthly amount by:

1. Not rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;

3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For cases with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, the agency shall prorate the income by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, the agency shall prorate the income by dividing by the number of months the business has been in existence.

3. The agency shall determine profit by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for cases with:

1. Earned or unearned income other than self-employment; or

2. Income from a self-employment enterprise which has not been in existence for at least one (1) year;

(b) At twelve (12) month intervals for cases with a self-employment enterprise which has been in existence for at least one (1) year;

(c) Whenever the agency becomes aware of a change in circumstances; or

(d) To reflect a mass change in the standard of need or maximum payment standard.

Section 10. [~~9.~~] AFDC Recoupment. Except for those overpayments in administrative regulation 904 KAR 2:017, the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8 [~~7~~] of this administrative regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. [~~10.~~] Avoiding an Overpayment. (1) An AFDC recipient may voluntarily return a benefit check to avoid an overpayment if:

(a) The case is totally ineligible for the month for which the check is issued; and

(b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the recipient is due a refund as described in Section 12 [~~11~~] of this administrative regulation.

Section 12. [~~11.~~] Refund. A recipient shall be due a refund in the following situations:

(1) The agency recoups an amount in excess of the actual overpayment;

(2) The agency offsets an overpayment and an underpayment and finds a balance owed to the recipient;

(3) A recipient voluntarily returns an AFDC check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the AFDC check was

intended to cover, leaving a balance owed to the recipient.

Section 13. [~~12.~~] Correction of Underpayments. The following provisions apply to all AFDC payments:

(1) The department shall promptly correct an underpayment to:

(a) A current AFDC recipient; and

(b) One who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 14. [~~13.~~] Material Incorporated by Reference. (1) Forms necessary for the determination of financial eligibility and recovery of overpayments in the AFDC program are incorporated effective December 1, 1993. These forms include:

(a) PA-30.2, revised 7/85;

(b) PA-35, revised 2/91;

(c) PA-36, revised 1/85;

(d) PA-37, revised 12/95;

(e) PA-412, revised 1/91; and

(f) [~~(e)~~] PA-415, revised 11/89.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: April 10, 1996

FILED WITH LRC: April 11, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by May 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: There are approximately 2,000 AFDC cases that could potentially be eligible for a direct child care payment that currently include earned income with a child care disregard. Currently there are an average of 69,334 basic AFDC cases with an average monthly grant of $200.13 and 3,425 unemployed parent AFDC cases with an average monthly grant of $246.80. Total number of affected entities for the payments maximum increase would be approximately 72,759.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

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

1. First year following implementation: Recipients would be required to submit monthly verification of the amount of child care expenses incurred while employed in order for direct child care payments to be made. The payment maximum increase would require no additional requirements on the entities affected.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Benefits costs: We estimate the benefit costs at $4,304,000 for direct child care payments to be made. The State portion of IV-A matching funds is 29.88% or $1,286,035 with the remaining $3,017,965 coming from federal funds. The estimated cost to increase the AFDC payment maximums would be $8,851,300 in FY 94 and FY 95 state general funds. That amount can be used to match $20,771,500 in federal funds for a total of $29,622,800 to apply towards the payment maximum increase. Benefit savings: We estimate a total benefit savings for ongoing child care of $1,040,000. The state share of savings would be $310,752 based on the 29.88% share. The total cost to the state for benefits only would then figure out to $975,283 after the savings are used to offset the cost. There is no savings as a result of the AFDC payment maximum increasing. Administration: The start up administrative costs will include system modifications to allow direct child care payments to be made. Programming costs for this are estimated at $3,000 to implement the policy change. It is difficult for the cabinet to estimate additional staffing costs for this policy change in terms of whether or not additional staff will be required to complete the monthly workload. If additional staff is not required, overtime may be required to accomplish this process. The agency has adequate funding to cover these additional costs provided they are not exorbitant. The increase in the AFDC payment maximums would require minimal additional administrative costs to modify the system to accommodate the new maximum amounts.

1. First year: See direct or indirect savings or costs.

2. Continuing cost or savings: Continuing costs would not include start up system costs for direct child care payments. Continuing costs for AFDC payment maximums should not change.

3. Additional factors increasing or decreasing costs: Additional factors that could increase costs is if the workload becomes too heavy and additional staff are needed to process direct child care payments. None for AFDC payment maximum increase.

(b) Reporting and paperwork requirements: Paperwork requirements will increase in that monthly verification must be sent out and returned in order to make monthly direct child care payments. No additional paperwork would be required to increase the AFDC payment maximums.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Title IV-A funds and state general funds.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only other alternative method for direct child care payments is the one currently in effect which is paying direct child care for one month only in the month employment begins. While this method helps, it does not resolve the ongoing problem of seamless services which assist in getting individuals off of AFDC and becoming self-sufficient. The alternative to not increasing the AFDC payment maximums is loss of funds due to being in noncompliance with KRS 47.011G.50a2.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendment that changes AFDC policy as it relates to dependent care expenses that are incurred as a result of employment will ensure equity between working clients and those in the JOBS program and will foster a system of seamless service which is beneficial to the welfare of both the AFDC parent and children in those households. The increase in the AFDC payment maximum would greatly aid families with dependent children in meeting their needs. There has not been a payment maximum increase since July 1989 and Kentucky's AFDC payment ranks as one of the lowest payment states in the nation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, potential exists.

(c) If detrimental effect would result, explain detrimental effect: With increased emphasis on states to transition welfare recipients to work in order to become self-sufficient, the need for availability of quality child care is imperative. Currently, due to the uncertainty by child care providers that they will be paid for child care services rendered during this transition period, AFDC children are not always accepted into day care programs. This could result in a detrimental effect on children's living environment. Parents who are unable to make up front payments may leave children in potentially abusive situations or with no adult supervision. Without an increase to the AFDC payment maximum, there are not adequate funds to meet the economic needs when current payments are based on the economy from 1989. In addition, the unexpended state funds can be used to draw down over twice the amount in federal dollars to aid in paying for the increase.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with Federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The proposed amendment to this administrative regulation is not a federal mandate but rather is an option available to states as a method of guaranteeing the availability of child care. There is no federal mandate to increase the AFDC payment maximums. This amendment is being completed based on state legislation.

2. State compliance standards. An AFDC state plan revision will be made at the end of the appropriate quarter once the change in policy becomes effective. Language in KRS 47.011G.50a.2. from the 1994 legislative session required that unexpended appropriations for AFDC benefits in FY 94 and FY 95 are to be used to increase AFDC benefit grants by the same percentage for each family size.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

904 KAR 2:055. Hearings and appeals.

RELATES TO: KRS 205.231, 45 CFR 205.10, 255.2

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 205.231, 205.237, 45 CFR 205.10, 251.5, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Families and Children shall [~~Human Resources has responsibility under 42 CFR section 431.220, 45 CFR section 205.10, and KRS 205.231 to~~] provide for a system of hearings to be available to any applicant for or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This administrative regulation sets forth the methods by which the hearing requirement is fulfilled for Aid to Families with Dependent Children, the Home Energy Assistance Program, and the State Supplementation Program.

Section 1. Informing the Applicant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing:

(a) Orally and in writing when application is made; and

(b) In writing when an [~~any~~] action is taken affecting his claim in accordance with KRS 13B.050.

(2) Each applicant or recipient shall be informed of:

(a) [~~his right to a hearing,~~] The method by which he may obtain a hearing; and

(b) That he may be represented by:

1. An authorized representative who may be:

a. [~~, such as~~] Legal counsel;

b. A relative;

c. A friend; or

d. Other spokesperson; or

2. [~~he may represent~~] Himself.

Section 2. Request for a Hearing. (1) An [~~Any~~] applicant or recipient or an authorized representative acting on his behalf, may request a hearing by filing a request with [~~either the local office or central office of~~] the Department for Social Insurance at either:

(a) The local office; or

(b) The central office. [~~a written or oral (later reduced to writing) statement clearly indicating a desire for a hearing.~~]

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement:

(a) In written form; or

(b) Orally, later submitted in writing by the applicant or recipient.

(3) A written request for a hearing may be sent to the Cabinet for

Families and Children, Division of Administrative Review, Hearing Branch, 275 East Main, Frankfort, Kentucky 40621.

Section 3. Time Limitation for Hearing Request Regarding Assistance Payments. (1) To be considered timely, a written or oral request from an applicant or recipient shall be received by the department within:

(a) Forty (40) [~~thirty (30)~~] days of the date of the advance notice of adverse action; or

(b) [~~notice of decrease or discontinuance as it affects recipients, or within~~] Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is delay in action.

(2) Up to an additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) [~~(1)~~] The applicant or [~~/~~] recipient was away from home during the entire filing period; or

(b) [~~(2)~~] The applicant or [~~/~~] recipient is unable to read or to comprehend the right to request a hearing on the:

1. Notice of adverse action; or

2. Notice of decrease or discontinuance [~~and right to request a hearing~~]; or

(c) [~~(3)~~] The applicant or [~~/~~] recipient moved resulting in delay in receiving or failure to receive the:

1. Notice of adverse action; or

2. Notice of decrease or discontinuance; or

(d) [~~(4)~~] Serious illness of the applicant or [~~/~~] recipient; or

(e) The reason for [~~(5)~~] the delay was no fault of the applicant or [~~/~~] recipient, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) Assistance shall be continued through the month in which the hearing officer's decision is rendered if the request:

(a) Results from dissatisfaction regarding a proposed discontinuance, suspension or decrease; and

(b) Is received within ten (10) days of the date on the:

1. Advance notice of adverse action; or

2. Notice of decrease or discontinuance.

(2) Assistance shall be reinstated and continued [~~(unless the client requests the discontinuance, suspension or decrease be in effect pending the hearing decision)~~] through the month in which the hearing officer's decision is rendered [~~.~~] if the request is:

(a) Received within twenty (20) days of the date on the:

1. Advance notice of adverse action; or

2. Notice of decrease or discontinuance; and

(b) [~~it is established that~~] The reason for delay meets the good cause criteria [~~as~~] contained in Section 3 of this administrative regulation.

(3) Subsections (1) and (2) of this section shall not apply if [~~, assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered (except that this requirement shall not require a continuation of benefits when~~] the program benefit has been reduced or discontinued as a result of a change in law, regulation[~~s~~], or policy of the cabinet[~~,~~].

(4) Continued or reinstated benefits are considered overpayments if the agency decision is upheld.

(5) If the applicant or recipient requests the discontinuance, suspension or decrease in assistance be in effect pending the hearing officer's decision, assistance shall not be continued or reinstated through the month in which the hearing officers' decision is rendered.

(6) Continuation or reinstatement of benefits pending a hearing decision shall not apply to child care and supportive services payments for job opportunities and basic skills participants.

Section 5. Acknowledgment of the Request. (1) A [~~All~~] hearing request[~~s~~] shall be acknowledged by the hearing branch.

(2) The acknowledgment letter shall contain information regarding:

(a) The hearing process, including the right to case record review prior to the hearing;

(b) The right to representation; and

(c) A statement [~~to the effect~~] that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization[~~s~~] within the community.

(3) Subsequent notification shall comply with the requirements of KRS 13B.050.

(a) All parties to the hearing shall be provided at least twenty (20) days timely notice of the date of the hearing to permit adequate preparation of the case.

(b) The applicant or recipient may request less timely notice of the date set for the hearing to expedite the scheduling of the hearing.

(4) A hearing complying with the requirements of KRS Chapter 13B [~~include the time and place the hearing will be held. Hearings~~] shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from the date of the request to the date of the decision[~~, with the exception that any hearing determination regarding a community spouse income/resource allowance shall be held within thirty (30) days of the hearing request date~~].

Section 6. Withdrawal or Abandonment of Request. (1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but [~~provided~~] he shall be [~~is~~] granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action.

(2) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing.

(3) A [~~, except that no~~] hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days [~~the opportunity~~] to establish that the [~~such~~] failure was for good cause in accordance with good cause criteria contained in Section 3 of this administrative regulation.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient [~~All applicants/recipients~~] shall receive notice consistent with KRS 13B.050, including:

(a) His [~~be informed of their~~] right to legal counsel or other representation;

(b) [~~of~~] The right to review the case record [~~review~~] relating to the issue; and

(c) [~~of~~] The right to submit additional information in support of the claim.

(2) When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary.

(3) If a medical assessment at cabinet expense is requested by the applicant or [~~/~~]recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 8. Postponement of a Hearing. (1) The applicant or recipient shall be entitled to a postponement of a hearing if:

(a) The request for the delay is made prior to the hearing; and

(b) The need for the delay is due to an essential reason beyond the control of the applicant or recipient in accordance with good cause criteria contained in Section 3 of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer.

(3) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

Section 9. [8.] Corrective Action for Assistance Program Benefits. (1) If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken is incorrect, he shall authorize corrective action in the form of:

(a) Assistance to which the applicant or recipient would have been entitled but for the incorrect decision; or

(b) If the issue was a [, for] proposed action, [authorize] continuing assistance.

(2) The applicant or [/] recipient then shall be [then] given the opportunity to withdraw the hearing request, but [notwithstanding the corrective action,] the hearing shall be scheduled if the applicant or [/] recipient wishes to pursue the request.

Section 10. [9.] Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(a) The [by a] hearing officer [whose impartiality is assured in that he] shall:

1. Be impartial; and

2. Disqualify himself for any reason set forth in KRS 13B.040. [not have been involved in the initial determination on the issue, or, to the extent possible, in previous hearings in behalf of the applicant/recipient. In addition a hearing officer may disqualify himself due to personal knowledge of circumstances of the applicant/recipient.]

(b) The applicant or [/] recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are [is] not met.

(2) The hearing shall be conducted in-state where the applicant or [/] recipient may attend without undue inconvenience.

[(2) The applicant/recipient, his representative and any other party to the hearing may present such evidence as shall be pertinent to the issue on which the adverse action was, or is proposed to be, taken, advance any arguments without undue interference.]

(3) [The hearing officer shall,] If necessary to secure full information on the issue, the hearing officer may examine each party who appears and his witnesses. [The hearing officer may take any additional evidence which he deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.]

(4) [The parties to the hearing, with the consent of the hearing officer, may stipulate the facts involved, in writing. The hearing may be decided on the basis of such stipulation or] The hearing officer may schedule a hearing and take [such] additional evidence as is deemed necessary.

(5) [All hearings shall be conducted informally and in such a manner as to determine the substantial rights of the parties. Telephonic hearings may be conducted, when the applicant or recipient consents, including all of the parties and their witnesses who shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon:]

(a) Parties to a telephonic hearing who wish to introduce documents or written materials not yet supplied to the opposing parties into the record at the hearing shall immediately mail copies of the [such] documents to the hearing officer and to the opposing party.

(b) All parties to the telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to convening of the hearing.

(c) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraphs (a) and (b) of this subsection may result in its being excluded from the record.

[(6) Subpoenas may be issued by the hearing officer to compel attendance of any witness or the production of records except that subpoenas requested by the applicant/recipient shall be issued only on a sworn statement of need by the applicant/recipient.

(7) The hearing officer may direct or grant a continuance of a hearing to secure necessary evidence.]

Section 11. [10.] The Decision. (1) After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and conclusions of law:

(a) [issues,] Specifying the reasons for the decision; and

(b) Identifying the supporting evidence and regulations. [Decisions with regard to a community spouse's income allowance are subject to downward adjustments as deemed necessary by the agency as circumstances causing financial duress change or no longer exist. The resource allowance is subject to this adjustment only with regard to resources attributed to the community spouse but not transferred in the first year. This adjustment is appealable pursuant to Section 4 of this administrative regulation.]

(2) A copy of the decision shall be mailed to:

(a) The applicant or [/] recipient and his representative; and

(b) The local office of the Department for Social Insurance.

(3) The decision, with respect to the issues considered, shall be final unless further appeal [to the appeal board] is initiated [under KRS 205.231(4)] within twenty (20) days from the date of mailing of the decision.

Section 12. [11.] Appeal from Decision of Hearing Officer. (1) Any applicant or [/] recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) The appeal [To be timely, such] request shall be considered timely, when an oral or written request is received in a local office or the hearing branch [central office] of the Department for Social Insurance within twenty (20) days of the date on which the hearing officer's decision was mailed; or

(3) If the good cause criteria in Section 3 of this administrative regulation is met, an appeal request [, except that a request] received within thirty (30) days of the hearing officer's decision shall [will] be considered timely [if the criteria in Section 3 of this administrative regulation is met].

(4) The request shall be:

(a) Filed in writing or orally, later reduced to writing; and

(b) [shall be] Considered filed on the day it is received.

Section 13. [12.] Applicant's or Recipient's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board [All appeals] shall be acknowledged in writing to the applicant or [/] recipient and his authorized representative.

(2) The acknowledgment shall:

(a) Offer the opportunity to file a brief[s] or submit new and additional proof; and

(b) [shall] State the tentative date on which the board will consider the appeal.

Section 14. [13.] Appeal Board Review. (1) An appeal [All appeals] to the appeal board shall be considered upon:

(a) The records of the department; and

(b) The evidence or exhibits introduced before the hearing officer unless the applicant or [/] recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, the parties may:

(a) [, if they desire,] Present written arguments; and

(b) At the board's discretion, be allowed to present oral arguments.

(3) If needed [In addition], the appeal board may direct the taking of additional evidence [before it, if needed,] to resolve the appeal.

(4) [Such] Evidence shall be taken by the board after seven (7) days notice to the parties, giving them [the parties] the opportunity:

(a) To object to introduction of additional evidence; or

(b) To rebut or refute any additional evidence.

Section 15. [14.] The Appeal Board Decision. (1) The decision of

the appeal board, duly signed by members of the board, shall:

(a) Set forth in writing the facts on which the decision is based; and

(b) Except as provided in subsection (2) of this section, [~~shall~~] be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150. [~~as provided in KRS 205.234.~~]

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the applicant or recipient, whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental security income;
2. Retirement, survivors and disability insurance;
3. Federal black lung benefits;
4. Railroad retirement benefits; or
5. Veterans Administration benefits based on 100 percent disability.

Section 16. [~~15.~~] Payments of Assistance. (1) Payments of assistance to carry out decisions of hearing officers or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) Providing it is established that the applicant or recipient was eligible during the entire period in which assistance was withheld, the month in which incorrect action of the cabinet adversely affected the applicant or [~~/~~] recipient [~~providing it is established that the applicant/recipient was eligible during the entire period in which assistance was withheld~~].

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing decision.

[~~Section 16. Special Provisions Relating to Skilled Nursing and Intermediate Care Level of Care Determinations. The cabinet contracts with a peer review organization to perform level of care determinations for individuals in skilled nursing and general intermediate care facilities. For those individuals appealing the peer review organization's level of care determinations, the following special provisions are applicable:~~

~~(1) Kentucky's designated peer review organization, pursuant to its contract with the cabinet, makes level of care determinations (i.e., a determination as to whether patient status criteria is met). If the level of care determination is adverse to the client, a written notice of the decision (and of the client's appeal rights) is provided to the client (patient), physician of record, the facility (if any), and the cabinet. The client then may begin the appeal process by requesting a reconsideration of the adverse decision. The request for reconsideration shall be made within sixty (60) days of the notice of the adverse decision. If the request for reconsideration is made within ten (10) days, benefits shall continue (as appropriate) until the reconsideration decision has been made. Reconsiderations shall be made within ten (10) working days of the request when the client is in the facility; if the request for reconsideration is received after the client has left the facility, the reconsideration shall be made within thirty (30) days.~~

~~(2) When the reconsideration decision is adverse to the client, he may then appeal to the cabinet in the usual manner. The appeal shall be filed within twenty (20) days of the date the client is notified of the reconsideration decision, and may be filed with the peer review organization or directly with the department. If filed with the peer review organization, they shall forward the request with appropriate medical records and any other necessary documentation to the cabinet.~~

~~(3) When a negative decision has been appealed to the cabinet, the appeal shall be processed as set forth in this administrative regulation. This provision shall not require a continuation of benefits following a reconsideration and shall not be used to contravene the timeliness provisions contained in this section.~~]

Section 17. Limitation of Fees. (1) Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorneys fees, the cabinet shall, in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for representation in all categories of public assistance as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any [~~(~~]briefs, [~~included)~~] of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) $300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.

(3) Enforcement of payment of the [~~such~~] fee shall be a matter entirely between the [~~such~~] counsel or agent and the applicant or [~~/~~] recipient. The [~~Such~~] fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the applicant or [~~/~~] recipient.

Section 18. Special Provisions Relating to Participants in a Work-related Program under the Job Opportunities and Basic Skills Program. (1) A participant in a work-related program under the Job Opportunities and Basic Skills Program may request a hearing for the resolution of a complaint with respect to:

(a) On-the-job working conditions;

(b) Workers' compensation coverage; and

(c) Wage rates used in calculating the hours of participation required of individuals in community work experience programs of the Job Opportunities and Basic Skills Program.

(2) A participant in a work-related program under the Job Opportunities and Basic Skills Program may appeal a hearing decision regarding an issue listed in subsection (1) of this section within twenty (20) days of the receipt of the state's written decision.

(a) The appeal shall be sent to the Office of Administrative Law Judges, U.S. Department of Labor, Vanguard Building, Room 600, 1111 20th Street, NW, Washington, DC 20036.

(b) Copies of the appeal, and any brief in support thereof, shall be sent to:

1. The Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; and

2. The Assistant Secretary for Family Support, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Sixth Floor, Washington, DC 20447.

(c) The appeal shall contain the following information:

1. The full name, address and telephone number of the Job Opportunities and Basic Skills Program participant;

2. The provisions of the Social Security Act or federal regulations believed to have been violated;

3. A copy of the original complaint filed with the state; and

4. A copy of the state's findings and decision regarding the complaint.

Section 19. Material Incorporated by Reference. (1) The form necessary for requesting a hearing, appeal, or withdrawal is being incorporated effective June 1, 1996. This form is the PAFS-78, revised May 1, 1996.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky, 40621. Office hours are 8 a.m. to 4:30 p.m. [~~Hearings and Appeals Relating to Decisions to Reclassify or Transfer Mentally Retarded Persons in State Institutions. In lieu of the hearing and appeal process specified above, hearings and appeals relating to decisions to reclassify or transfer mentally retarded persons in state institutions shall be in accordance with the requirement of KRS 210.270.~~]

JOHN L. CLAYTON, Commissioner
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: April 3, 1996
FILED WITH LRC: April 10, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation provides for a system of hearings to be available to applicants and recipients for the Aid to Families with Dependent Children (AFDC), the Home Energy Assistance Program, and the State Supplementation Program who are dissatisfied with any action or inaction on the part of the Department for Social Insurance and does not establish the standards by which eligibility is determined for the applicants and recipients of these programs. Approximately 71,700 average monthly Aid to Families with Dependent Children cases and 5,900 average monthly state supplementation recipients receive benefits and approximately 515 hearings are held yearly for these programs. There have been no hearing requests from applicants and recipients of the Home Energy Assistance Program. The time limitation for a hearing request to be considered timely is from 30 days to 40 days from the date of the timely notice. The 40 day time frame includes the 10 day period for cases requiring advance notice. The 30 day time frame for the applicant or recipient to file for a hearing for case actions requiring adequate notice and not advance notice is unchanged. Information is clarified for the continuation or reinstatement of benefits for hearing requests. Unless the applicant or recipient requests otherwise, assistance is continued through the month in which the hearing officer's decision is rendered if the request is received within 10 days of the date on the notice. If the case has been discontinued, the case is reinstated and continued if the request is received within 20 days of the date of the notice. This information does not change current policy and there will be no impact to recipients or applicants. Information is added regarding the postponement of a hearing at the request of the applicant or recipient. A recipient or applicant who has a hearing scheduled will be able to request a postponement of the hearing due to an essential beyond the control of the client or recipient, as established in the administrative regulation. Section 6 allows a period of 10 days from the date of a scheduled hearing as the time frame the applicant or recipient and, if applicable, his legal counsel or representative has to establish that an abandonment of a hearing was due to good cause as provided in the administrative regulation. The applicant or recipient is then given the opportunity to reschedule the hearing if good cause criteria is met. Section 10 removes provisions regarding the conduct of a hearing that are now found in KRS Chapter 13B. Section 15 allows for reversal of the Appeal Board decision in instances where the only issue was incapacity or disability and the award letter regarding RSDI, SSI, Black lung, Railroad retirement or VA based on 100% disability was received within 20 days after the Appeal Board decision was made. This change will allow a reversal in cases where the receipt of an award letter regarding the approval of benefits based on disability is received after the appeal board decision. This change will allow the Appeal Board to reverse their decision regarding an applicant or recipient who receives an award letter for approval of benefits based on 100% disability within 20 days after the decision is made. Section 16 provides a 10 day time frame for the agency to restore benefits to the applicant or recipient due to hearing decisions that reverse the agency's action that reduced or discontinued the benefits. This change will assure the applicant and recipient will receive eligible benefits as soon as possible. Section 18 adds special hearing and appeal provisions for participants of the Job Opportunities and Basic Skills Program. The individual may request a hearing with respect to on-the-job working conditions, workers' compensation coverage, or wages rates used in calculating the hours of participation required of individuals in community work experience programs of the Job Opportunities and Basic Skills Program. The hearing decision may be appealed directly to the U.S. Department of Labor. Compliance with KRS Chapter 13B, uniform administrative hearing procedures will have no impact to the entities affected by this administrative regulation. The cabinet was granted limited exemption due to requirements mandated by federal regulations. These exemptions are for time frames, hearing officers, and delegation of authority for final order which are federal requirements. Existing language is amended to comply with formatting requirements in KRS Chapter 13A.

(2) Direct and 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

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

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: No fiscal impact to the Department for Social Insurance is anticipated.

(a) Direct and indirect cost or savings:

1. First year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be

implemented: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed since policy is set forth in federal policy. In 45 CHR 205.10(a)(5)(iii) the claimant is allowed a reasonable time in which to appeal the agency action. The Kentucky AFDC State Plan which is information approved by the federal government needed to determine state compliance with both federal statutory and regulatory requirements for participation in the AFDC program, allows for the time frames of 40 and 30 days as reasonable time frames to request a hearing. This amendment brings the administrative regulation in compliance with the AFDC State Plan.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A recipient or applicant of an assistance program who is sent an advance notice on a case action to discontinue or decrease benefits will have 40 days instead of 30 days from the date of the advance notice of adverse action to request a hearing. In addition, a recipient or applicant who has a hearing scheduled will be able to request a postponement of the hearing due to an essential reason beyond their control as established in the administrative regulation. The applicant or recipient will be assured benefits will be received as soon as possible due to the 10 day time frame to restore benefits following a hearing decision that reversed the agency's action that reduced or discontinued benefits.

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

(c) If detrimental effect would result, explain detrimental effect: KRS Chapter 13B mandates compliance with uniform administrative hearings procedures. Noncompliance will result in loss of state funds to the AFDC and State Supplementation Program.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No (Explain why tiering was or was not used) Tiering is not applied because Aid to Families with Dependent Children and the State Supplementation Program require uniformity in the application of policy. KRS 205.231 states that a system of hearings is to be available to any applicant or recipient of an assistance program who is dissatisfied with an action or inaction on the part of the cabinet.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 205.10 and 45 CFR 251.5

2. State compliance standards. KRS 205.231, 205.237.

3. Minimum or uniform standards contained in the federal mandate. There are requirements to provide for a system of hearings to be available to any applicant or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. There is a federal mandate for the state to establish and maintain a grievance procedure under the agency's fair hearing process for resolving complaints by or on behalf of individuals participating in a work-related program under the Job Opportunities and Basic Skills Program including the opportunity to appeal directly to the U.S. Department of Labor.

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. No

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

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

3. State the aspect or service of local government to which this administrative regulation relates.

4. How does this administrative regulation affect the local government or any service it provides?

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

904 KAR 2:116. Home energy assistance program.

RELATES TO: KRS 194.050, 42 USC 8621 et seq., EO 95-79

STATUTORY AUTHORITY: KRS 194.050, 42 USC 8621 et seq.

NECESSITY AND FUNCTION: Executive Order 95-79, effective 12/28/95, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [~~Human Resources~~] has responsibility as prescribed by 42 USC 8621 et seq., as amended, to administer the Low Income Home Energy Assistance Program (LIHEAP) to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This administrative regulation states the eligibility and benefits criteria for heating assistance.

Section 1. Definitions. (1) An "authorized representative" means the person who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) "Crisis component" means the component that provides assistance to households which are experiencing a home heating crisis.

(3) "Economic unit" means one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application or will be disconnected from a utility service within forty-eight (48) hours.

(5) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) "HEAP" means home energy assistance program and shall refer to the heating assistance portion of LIHEAP.

(8) "Heating season" means the period from October through April.

(9) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit and purchase energy in common.

(10) "Life threatening situation" means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(11) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary

basis;

(b) He considers home;

(c) To which, when absent, he intends to return; and

(d) Is identifiable from other residences, commercial establishments, or institutions.

(12) "Subsidy component" means the component that provides eligible households with a one (1) time payment to the household's energy provider.

Section 2. Application. (1) Each household or authorized representative shall complete an application and provide proof of all household income, the most recent heating bill or verification that heat is included in the rent and Social Security numbers for all household members for the agency [~~information necessary~~] to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed is received.

Section 3. Eligibility Criteria. (1) Income.

(a) Gross household income shall be at or below 110% of the federal poverty income guidelines. Relative to household size, the gross monthly income for the month prior to application shall be at or below the following:

Household Size	Gross Monthly Income	Household Size	Gross Monthly Income
1	$685	7	$2,093
2	$920	8	$2,328
3	$1,155	9	$2,563
4	$1,389	10	$2,798
5	$1,624	11	$3,033
6	$1,859	12	$3,268

For each additional family member, $235 shall be added. [~~as published annually by the U.S. Department of Health and Human Services. The Department for Social Insurance shall announce the income guidelines after being published by the Department of Health and Human Services.~~]

(b) Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;

2. Payments made to others on the household's behalf;

3. Loans;

4. Reimbursements for expenses;

5. Incentive payments (JET and JTPA) normally disregarded in AFDC;

6. Federal payments or benefits which shall be excluded according to federal law; and

7. Supplemental medical insurance premiums.

(2) Liquid assets.

(a) The household shall have total liquid assets at the time of application of not more than $1,500, or $4,000 if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.

(b) Excluded assets are:

1. Cars;

2. Household or personal belongings;

3. Principal residence;

4. Cash surrender value of insurance policies;

5. Prepaid burial policies;

6. Real property; and

7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section.

(3) The household shall be responsible for home heating costs or pay heating costs as an undesignated portion of the rent.

(4) Crisis component.

(a) Applicants shall meet the criteria in subsections (1), (2), and (3) of this section [~~income and liquid assets criteria~~]; and

(b) [~~Be without heat; or~~

~~(c)~~] Be without fuel if coal, wood, or kerosene is the primary heat source [~~within five (5) days~~]; or

(c) Be without fuel or disconnected from services within forty-eight (48) hours if propane, fuel oil, natural gas, or electric is the primary heat source; or

(d) [~~Have received a notice of disconnection of service; or~~

~~(e)~~] Have an inoperable heating system; or

(e) [~~(f)~~] For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

Section 4. Benefit Levels. (1)(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

(b) Benefits shall be determined from fuel usage data and from the average heating season energy cost for the six (6) primary heating fuels prior to the implementation of the subsidy component.

(c) Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits. Benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

(d) Households living in federally assisted housing and receiving a utility allowance shall be eligible for benefits which shall be lower than benefits provided to all other households.

(2) Crisis component. Benefits to households, including households living in federally assisted housing, shall be the minimum amount necessary to alleviate the crisis. Benefits may be fuel or other energy for heating, heaters, blankets or sleeping bags, or emergency shelter. Space heaters shall be a temporary service and shall be loaned to a household until fuel is delivered, the heating system is repaired or other resources are located which will alleviate the crisis. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance, the contracting agency shall take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household may receive assistance more than once, but shall not receive more than the maximum allowable for the primary heating fuels determined prior to component implementation.

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating fuel as determined prior to component implementation.

(d) A household that has a heating system that has become inoperable since the end of the previous heating season shall be referred to the local weatherization program to have its heating system evaluated and repaired if necessary.

(e) All eligible households, including those residing in subsidized housing, with an income at or above twenty-eight (28) percent of the poverty level shall make a copayment amount as a percentage of the amount needed to relieve the crisis. Those households residing in subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(f) The copayment amount shall be based on the housing type and the household's percentage of poverty and shall be as follows:

Percent of Poverty	Copayment Percentage for Households Residing in Nonsubsidized Housing	Copayment Percentage for Households Residing in Subsidized Housing
0 - 27%	0%	0%
28 - 55%	10%	15%
56 - 83%	15%	20%
84 - 110%	20%	25%

Section 5. Benefit Delivery Methods. (1)(a) Payment under the subsidy component is authorized by a one (1) party check made payable to the household's energy provider or landlord if the cost of heating is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For the crisis component, direct cash payments shall not be made to the recipient. Payments shall be authorized to the energy provider by one (1) party checks upon delivery of fuel or restoration, or continuation, of service; or to vendors supplying heaters, blankets, or emergency lodging.

Section 6. Right to a Fair Hearing. Any individual who has been denied assistance or whose application has not been acted upon with reasonable promptness has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Vendor Selection. (1) Subsidy component.

(a) The contracting agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The contracting agency shall place an advertisement for interested vendors in the local newspapers with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) All potential vendors shall provide the contracting agency with a fixed price in gallons for propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) Prior to being accepted as a vendor, the vendor shall sign an agreement to comply with the requirements in Section 11 of this administrative regulation and agree to the following:

1. Allow contracting agency and authorized federal or state representatives to inspect records upon request;

2. Maintain records to financial transactions regarding HEAP for a period of three (3) years;

3. Provide information to the agency on any instances where the vendor may be aware that a household has been approved for benefits by misrepresentation of the household's situation;

4. Provide fuel as specified and at the price quoted;

5. Comply with the Equal Employment Opportunity standards; and

6. Comply with billing procedures established by the agency.

(e) Households shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of all approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For households with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within forty-eight (48) hours.

Section 8. Time Standards. (1) Under the subsidy component, an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 9. [~~8.~~] Effective Dates. (1) Implementation and termination dates for HEAP, depending upon the availability of funds, are:

(a) Applications for the subsidy component shall be accepted within the time period the department designates in the annual LIHEAP state plan as submitted to the federal government.

(b) Applications for the crisis component shall be accepted beginning on the date specified in the annual LIHEAP state plan and ending by March 31 [~~April 30~~], or until all available funds have been expended. Applications shall be processed in the order taken until funds are expended.

(2) HEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation if additional federal funds are made available.

Section 10. [~~9.~~] Allocation of Funds. (1) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component.

(2) The balance of benefit funds for HEAP shall be reserved for the crisis component. All benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's share of the nonduplicated households assisted in the 1994 crisis component. $400,000 of the crisis benefit funds shall be identified as contingency funds and allocated to agencies as needed. [~~eligible population except that the department shall establish by administrative regulation a minimum and maximum level of funds that agencies may receive relative to the amount of funds expended for crisis assistance in the preceding year.~~]

(3) Each agency shall reserve ten (10) percent of the allocation under subsection (2) of this section to assure that funds are available until April 30, to assist households who are without heat or will be disconnected from utility services within forty-eight (48) hours.

(4) No less than $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

Section 11. [~~10.~~] Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel during the crisis component shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program;

(3) HEAP recipients shall be treated the same as households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

JOHN L. CLAYTON, Commissioner
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: April 8, 1996
FILED WITH LRC: April 10, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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 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 notifications of intent to attend the public hearing or written comments on the proposed administrative regulations to: William K. Moore, Jr., Acting General Counsel, Cabinet for Families and Children, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The Home Energy Assistance Program will be comprised of two components, subsidy and crisis which will provide heating benefits to eligible low income households at or below 110% of the federal poverty level. The number of households affected by the program will be dependent upon the federal appropriation.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: Effective January 8, 1996, with the opening of the crisis component, all eligible households with incomes at or above 28% of poverty will make a copayment as a percentage of the amount needed to relieve the crisis. Those households living in subsidized housing will be required to pay a higher copayment.

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

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

1. First year following implementation: The HEAP service providers are required to accept applications, determine eligibility and benefit amounts, issue vouchers, reimburse vendors, solicit and approve vendors, submit reports to the contracting agency, and obtain an annual audit. These requirements will neither increase nor decrease the costs. Cost of the program is determined by the federal appropriation of LIHEAP; the cost of administration is relative to the allocation - not to exceed 10% of the grant. The contractor agency, Kentucky Association for Community Action, will monitor each subcontractor a minimum of one time during the duration of the HEAP Program.

2. Second and subsequent years: The compliance, paperwork and reporting requirements for all subsequent years will be the same as the first year.

(3) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of HEAP.

(a) Direct and indirect cost or savings: Up to ten (10) percent of available funds for HEAP, may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing cost or savings: There will not be any continuing costs or savings.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits. The Department for Social Insurance shall collect and analyze data on households receiving assistance and report such to the Department for Health and Human Services.

(4) Assessment of anticipated effect on state and local revenues: The HEAP shall have little impact upon state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds.

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

(a) Geographical area in which administrative regulation will be implemented: Statewide. No public comments were received; therefore, the public hearing on the Notice of Intent was canceled. Heating benefits will be paid to heating fuel vendors. The economic impact can be determined only after Congress appropriates funds.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being amended to reflect the plan for heating assistance contained in the Low Income Home Energy Assistance Block Grant which was subject to substantial public review and comment, a legislative review and public hearing. Criteria has been set at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funds for the two (2) components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the state plan.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of HEAP will have a somewhat positive effect on the public health of the low income eligible population in that they will receive benefits to maintain a heating source, to assist in having a heating source, gas or electric turned back on, or to have an inoperable heat system repaired.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the public health of low-income families during the winter months would result if the program is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If HEAP is not implemented a number of individuals or households at or below 110% of the federal poverty level may experience severe health problems related to not having sufficient heat during the winter; hypothermia and freezing to death would be possible.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping or a duplication of HEAP.

(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? Federal statutes mandate that eligibility requirements be in a like manner on a statewide basis; therefore, tiering is prohibited.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 97-35 as amended, and 45 CFR 96.

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. Outreach activities must be conducted to assure that eligible households, especially those with elderly, disabled, or both are made aware of HEAP assistance. The designation of local agencies administering similar low income energy assistance programs shall be given priority as service deliverers. The statute requires that owners and renters be treated equitably. The statue requires crisis assistance that is weather or supply related or related to other factors affecting the availability of residential energy until March 15. In addition, it is required that the highest level of assistance be provided to those households which have the lowest incomes and the highest energy costs in relation to household income and household size.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need is a liquid resources test of $1,500, except that households with a catastrophic illness shall have a limitation on resources at $4,000. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds. In addition, effective January 8, 1996 in the crisis component, all eligible households, including those residing in subsidized housing, at or above 28% of the poverty level will be required to make a copayment as a percentage of the amount needed to relieve the crisis. Because they receive a utility allowance, subsidized households will be required to pay a higher copayment.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of available funds, it is necessary to target assistance to those households most in need and to require households to pay a small amount toward relieving the crisis.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect cities which own and operate utilities for heating.

3. State the aspect or service of local government to which this administrative regulation relates. Municipal utilities.

4. How does this administrative regulation affect the local government or any service it provides? The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

904 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82), 59 FR 44343-47

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 7 CFR 271.4, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Families and Children [~~Human Resources~~] shall administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. (1) An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation, as defined by 904 KAR 3:050, Section 5(3).

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual.

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings which shall be heard by a fair hearing official.

(2) A hearing shall be conducted by an impartial official who:

(a) Did not have any personal stake or involvement in the case;

(b) Was not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Was not the immediate supervisor of the case worker who took the action.

(3) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 13.

(4) The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 14.

(5) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 15.

(6) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the household member of the decision.

(8) Provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement not to exceed thirty (30) days.

(9) If a hearing is postponed, the time limits specified in subsection (7) of this section shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled.

(2) The notice shall be sent certified mail - addressee only - return receipt requested and shall comply with the requirements of KRS 13B.050 and also contain the following:

(a) [~~The date, time, and place of the hearing;~~

~~(b) The charge against the household member;~~

~~(c)~~] A summary of the evidence;

[~~(d) How and where the evidence may be examined;~~]

(b) [~~(e)~~] A statement that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(c) [~~(f)~~] A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(d) [~~(g)~~] A statement that a determination of intentional program violation shall result in disqualification penalties as described in Section 10 of this administrative regulation, and a statement of which penalty is applicable to the case scheduled for a hearing;

(e) [~~(h)~~] A listing of the household member's rights as contained in 904 KAR 3:070, Section 14;

(f) [~~(i)~~] A statement that the hearing shall not preclude the state or federal government from:

1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or

2. Collecting the overissuance; and

(g) [~~(j)~~] If there is an individual or organization available that provides free legal representation, a statement of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of such evidence may result in the exclusion of this evidence from the record.

(5) If the household member or his representative does not appear for a face-to-face or telephonic hearing, the state agency shall determine whether proper advance notice was received by the household member.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted.

(b) The hearing process is again initiated when the household member is located and another notice can be provided to that member.

(c) If the agency has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted.

(6) Even if the household member is not represented, the hearing official is required to:

1. Carefully consider the evidence; and

2. Determine if intentional program violation was committed based on clear and convincing evidence.

(7) Any administrative disqualification hearing conducted shall comply with the requirements of KRS 13B.080 and 13B.090.

(8) If the household member is found to have committed an intentional program violation, but a hearing official later determined that the household member or representative had good cause, as defined in 904 KAR 3:070, Section 10, for not appearing:

(a) The previous decision shall not remain valid;

(b) The cabinet shall conduct a new hearing; and

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(9) [~~(8)~~] The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(10) [~~(9)~~] A hearing official shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing. (1) A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household until:

(a) The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation;

(b) The individual has signed a waiver of right to an administrative disqualification hearing; or

(c) The individual has signed a disqualification consent agreement; and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing official shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation as specified in Section 1 of this administrative regulation.

(2) The decision of the hearing official shall:

(a) Specify the reasons for the decision;

(b) Identify:

1. The supporting evidence;

2. Kentucky statutory citations, if applicable;

3. The state administrative regulations; and

4. Corresponding federal regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) The case record shall be retained by the cabinet until all appeals have been exhausted.

(a) The content of the case record shall comply with KRS 13B.130. [~~contain:~~

~~1. The substance of what transpired at the hearing;~~

~~2. All papers and requests filed in the hearing proceeding.~~]

(b) This record shall be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

(a) The hearing decision; and

(b) His rights to appeal that decision pursuant to KRS 13B.140.

(2) If the hearing finds that the household member committed intentional program violation, the notice shall:

(a) Be provided prior to disqualification;

(b) Inform the household member of the disqualification; and

(c) Advise the household member when the disqualification will take effect.

(3) [~~If the individual is no longer participating, the notice shall inform the individual that the period of disqualification shall be deferred until the individual:~~

~~(a) Applies for food stamps; and~~

~~(b) Is determined eligible for program benefits.~~

~~(4)~~] A notice shall be provided to the remaining household members, if any, informing them of:

(a) The allotment they will receive during the disqualification period; or

(b) That they may reapply because their certification period has

expired.

(4) [(5)] A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing.

(2) The cabinet shall:

(a) Ensure that:

1. The appropriate field services supervisor or designated agency representative reviews the evidence against the household member suspected of the IPV; and

2. A decision is obtained that the evidence warrants scheduling a disqualification hearing.

(b) Provide written notification to the household member suspected of IPV that the member can waive his right to an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to sign a disqualification consent agreement in a case of deferred adjudication.

(2) The cabinet shall use a disqualification consent agreement for a case in which a determination of guilt is not obtained from a court because the accessed individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) An individual found to have committed an intentional program violation in accordance with 904 KAR 3:050, Section 5(3)(b) shall be ineligible to participate in the Food Stamp Program:

(a) For a period of six (6) months for the first intentional program violation, except as provided by subsections (2) and (3) of this section;

(b) For a period of twelve (12) months upon the second occasion of any intentional program violation, except as provided by subsections (2) and (3) of this section; and

(c) Permanently for the third occasion of any intentional program violation.

(2) An individual found by a federal, state or local court to have used or received coupons in a transaction involving the sale of a controlled substance, as defined by 21 USC 802, shall be ineligible to participate in the program:

(a) For a period of twelve (12) months upon the first occasion of the violation; and

(b) Permanently upon the second occasion of the violation.

(3) An individual found by a federal, state or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of the violation.

(4) The penalties in subsections (2) and (3) of this section shall also apply in cases of deferred adjudication, as described in Section 9 of this administrative regulation, where the court makes a finding that the individual engaged in the conduct described in subsections (2) and (3) of this section.

(5) If a court fails to impose a disqualification period for any intentional program violation, the cabinet shall impose the appropriate disqualification penalty specified in subsections (1), (2) or (3) of this section, unless it is contrary to the court order.

(6) Regardless of when an action was taken by an individual which caused an intentional program violation to occur, the disqualification periods specified in subsections (2) and (3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(7) The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:

(a) Is found to have committed the intentional program violation; or

(b) Signed the waiver of the right to an administrative disqualification hearing; or

(c) Signed the disqualification consent agreement in cases referred for prosecution.

(8) The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members are responsible for making restitution for the amount of any overpayment, in accordance with 904 KAR 3:050.

(9) If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore any benefits that were lost as a result of the disqualification.

(10) The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. (1) No further administrative appeal procedure shall exist after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed; or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent fair hearing decision.

(3) The household member who is subject to subsection (2) of this section is entitled to seek relief in a court having appropriate jurisdiction in accordance with KRS 13B.140.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Material Incorporated by Reference. (1) Form FS-80, revised 9/94, is necessary:

(a) To provide an individual suspected of committing an intentional program violation with information regarding his claim;

(b) To inform an individual of his rights to an administrative disqualification hearing.

(2) Form FS-80, Supplement A (revised 1/93), is necessary to permit an individual the opportunity to waive his right to an administrative disqualification hearing.

(3) Form FS-111, revised 9/94, is necessary to defer adjudication of an individual suspected of intentional program violation.

(4) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: April 1, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The amendment will not directly affect any entities. It is merely removing duplication of language between what is currently in the administrative regulation and adding references to KRS Chapter 13B where appropriate.

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested and no comments were received.

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

1. First year following implementation: No additional factors as a result of this amendment.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None, we are just removing duplicative language from the administrative regulation.

(a) Direct and indirect cost or savings: None

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional 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: 50% federal funding/50% state 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) Geographical area in which administrative regulation will be implemented: No public hearing was requested and no comments were received.

(b) Kentucky: No public hearing was requested and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternatives are available. KRS Chapter 13B mandates the revisions being made to this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None other than bringing the administrative regulation into compliance with KRS Chapter 13B.

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

(c) If detrimental effect would result, explain detrimental effect:

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The federal statute 7 USC 2014(b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. KRS Chapter 13B

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

904 KAR 3:070. Fair hearings.

RELATES TO: KRS 194.050, 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 7 CFR 271.4, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Families and Children [~~Human Resources~~] shall administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the fair hearing procedures used by the cabinet to administer the Food Stamp Program.

Section 1. Availability of Hearings. (1) The cabinet shall provide a fair hearing to any household aggrieved by any action of the cabinet that affects the participation of the household in the Food Stamp Program.

(2) The cabinet shall provide a state level fair hearing conducted by a state level hearing officer. The fair hearing shall be conducted at:

(a) The local office administering the household's allotment; or

(b) An alternate site if the applicant or recipient:

1. Is unable to travel to the local office; and

2. Requests an alternate site.

(3) If the applicant, recipient, and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(4) A party who wishes to introduce a document or written material into the record at the hearing pursuant to KRS 13B.080(2) shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(5) Failure to provide both the hearing officer and the opposing party with a copy of such evidence may result in the exclusion of this evidence from the record.

Section 2. Consolidation of Administrative Disqualification Hearing with Fair Hearing. (1) The cabinet may combine a fair hearing and an administrative disqualification hearing into a single hearing if:

(a) The factual issue arises out of the same, or related, circumstance; and

(b) The household receives prior notice that the hearings shall be combined.

(2) If the disqualification hearing and fair hearing are combined, the cabinet shall follow the time frames for conducting a disqualification hearing in accordance with 904 KAR 3:060, Section 2.

(3) The household shall lose its right to a subsequent fair hearing on the amount of the claim if a combined hearing convenes for the purpose of:

(a) Setting the amount of the claim; and

(b) Determining whether or not an intentional program violation has occurred.

(4) Upon household request, the cabinet shall allow the household to waive the thirty (30) day advance notice period required by 904 KAR 3:060, Section 3, if a disqualification hearing and a fair hearing are combined.

(5) A household that has already had a fair hearing on the amount of an overissuance or claim shall not be entitled to another hearing on that issue.

Section 3. Timely Action on Hearing Requests. (1) Within sixty (60) days of a request for a fair hearing, the cabinet shall:

(a) Acknowledge the hearing request by issuance of notice of administrative hearing in accordance with 7 CFR 273.15 and KRS 13B.050(2) and (3);

(b) Conduct a hearing; and

(c) Issue a decision.

(2) A decision that results in an increase in household benefits shall be reflected in the coupon allotment within ten (10) days of the receipt of the hearing decision.

(a) The cabinet shall provide a household:

1. Supplementary coupons; or

2. With an opportunity to obtain the allotment outside the normal issuance cycle.

(b) The cabinet may take longer than ten (10) days if:

1. It elects to make the decision effective in the household's normal issuance cycle; and

2. The issuance shall occur within sixty (60) days from the household's request for the hearing.

(3) A decision that results in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

Section 4. Agency Conference. (1) The cabinet shall offer an agency conference to a household adversely affected by the cabinet's action.

(2) The household shall be advised that an agency conference is:

(a) Optional; and

(b) Shall not delay or replace the fair hearing process.

(3) An agency conference may lead to an informal resolution of the dispute.

(4) A fair hearing shall still be held unless the household makes a written withdrawal of its request for a hearing.

(5) The agency conference shall be attended by:

(a) The case worker;

(b) His supervisor; and

(c) The household member; or

(d) Representative.

(6) An agency conference for a household contesting a denial of expedited service shall be scheduled within two (2) working days, unless the household:

(a) Requests that it be scheduled later; or

(b) States that an agency conference is not wanted.

Section 5. Group Hearings. (1) The cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing.

(2) A hearing case may be consolidated only if:

(a) Individual issues of fact are not disputed; and

(b) The sole issue is one of:

1. Federal law;

2. Regulation; or

3. Policy.

(3) In a group hearing, the same procedures specified in this administrative regulation governing an individual hearing shall be followed.

(4) Each client shall be permitted to:

(a) Present his own case;

(b) Be represented by legal counsel; or

(c) Be represented by other spokesperson.

Section 6. Postponement of a Hearing. (1) Upon request, a household shall be entitled to receive a postponement of the scheduled hearing.

(2) The postponement shall not exceed thirty (30) days from the date of the postponement request.

(3) The time limit for action on the decision may be extended for as many days as the hearing is postponed.

Section 7. Notification of Rights to Request a Hearing. (1) At the time of application the cabinet shall notify each household in writing of:

(a) Its right to a hearing;

(b) The method by which a hearing may be requested; and

(c) That its case may be presented by a household member or a representative, such as:

1. Legal counsel;

2. A relative;

3. A friend; or

4. Other spokesperson.

(2) If a household expresses to the cabinet that it disagrees with the cabinet's action, it shall be reminded in writing of its right to request a fair hearing.

(3) If there is an individual or organization available that provides free legal representation, the household shall be informed in writing of the availability of that service.

Section 8. Request for Hearings. (1) Any household member shall have the right to request a hearing on any action by the cabinet that:

(a) Affects the participation of the household in the program; and

(b) Occurred in the prior ninety (90) days; or

(c) Denied a request for restoration of any benefits lost more than ninety (90) days but less than a year prior to the request.

(2) Within a certification period, a household may request a fair hearing to dispute its current level of benefits.

Section 9. The Cabinet's Responsibilities on Hearing Request. (1) A request for a hearing shall be:

(a) A clear expression, oral or written, by the household or its representative;

(b) That it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.

(2) If it is unclear from the household's request what action it wishes to appeal, the cabinet may request the household to clarify its grievance.

(3) The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(4) Upon request, the cabinet shall make available, without charge, the specific materials necessary for:

(a) A household or its representative to determine whether a hearing should be requested; or

(b) To prepare for a hearing.

(5) Upon request, the cabinet shall help a household with its hearing request.

(6) If a household makes an oral request for a hearing, the cabinet shall complete the procedures necessary to start the hearing process.

(7) Households shall be advised of any free legal services available that can provide representation at the hearing.

(8) The cabinet shall expedite a hearing request from a migrant farmworker household, that plans to move from the jurisdiction of the hearing official before the hearing decision shall normally be reached.

(9) A hearing request from a migrant farmworker household shall be processed faster than other requests if necessary to enable the household to receive a decision and restoration of benefits, if the decision so indicates, before it leaves the area.

Section 10. Denial or Dismissal of a Fair Hearing Request. The cabinet shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in Section 8 of this administrative regulation;

(2) Prior to the release of the hearing officer's decision, the client or his representative withdraws in writing his request for a hearing at any time; or

(3) The household or its representative fails to appear to the scheduled hearing without good cause, as defined below:

(a) The household member was away from home during the entire filing period;

(b) The household member is unable to read or to comprehend the notice;

(c) The household member moved which resulted in a delay in receiving or failure to receive the timely notice;

(d) Serious illness of a household member;

(e) The delay was no fault of a household member; or

(f) The household member did not receive the notice.

Section 11. Continuation of Benefits. (1) If a household requests a fair hearing within the period provided on the notice of adverse action, it shall be allowed to continue participation in the program on the basis authorized immediately prior to notice of adverse action:

(a) If its certification period has not expired; or

(b) The household has not specifically waived continuation of benefits.

(2) The state agency shall consider the request timely received if:

(a) The adverse notice period ends on a weekend or holiday; and

(b) A request for a fair hearing and continuation of benefits is received the day after the weekend or holiday.

(3) If the household fails to request a hearing within the notice period for good cause, benefits shall be reinstated on the prior basis.

(4) If benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated if:

(a) The issue is that food stamp eligibility or benefits were improperly computed; or

(b) Federal law or regulation is being misapplied or misinterpreted by the cabinet.

(5) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(a) The certification expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the cabinet;

(b) The hearing officer makes a preliminary determination in writing and at the hearing, that:

1. The sole issue is one of federal law or regulation; and

2. No questions of fact are involved;

(c) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending, and the household fails to request a hearing after the subsequent notice of adverse action;

(d) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(e) The household or representative fails to appear at the hearing without good cause. Attendance shall not be required at a group hearing.

Section 12. Notification of Time and Place of Hearing. (1) The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household.

(2) At least ten (10) days prior to the hearing, advance written notice shall be provided to any party involved to permit adequate preparation of the case.

(3) The household may request less advance notice to expedite the scheduling of the hearing.

(4) The content of the notice shall comply with the requirements of KRS 13B.050(2) and (3) and shall also:

(a) Advise the household or representative of the name, address, and phone number of the person to notify if it is not possible for the household to attend the scheduled hearing;

(b) Specify that the cabinet shall dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause; and

(c) Include the cabinet's procedure and any other information that provides the household with an understanding of the proceedings and that contributes to the effective presentation of the household's case[~~; and~~

~~(d) Explain that the household or representative may examine the case file prior to the hearing~~].

Section 13. Hearing Official. (1) The cabinet shall designate a hearing official who:

(a) Does not have any personal stake or involvement in the case;

(b) Was not directly involved in the initial determination of the action which is being contested;

(c) Was not the immediate supervisor of the case worker who took the action; and

(d) Is an employee of the cabinet; and

(e) Who is not otherwise disqualified pursuant to KRS 13B.040.

(2) The hearing official conducting the hearing shall have that authority set forth in KRS 13B.080 and shall: [~~The power and duties of the hearing official shall be as follows:~~

~~(a) Administer oaths or affirmations;~~

~~(b) Ensure that all relevant issues are considered;~~

~~(c) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;~~

~~(d) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;~~]

(a) [~~(c)~~] Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the cabinet;

[~~(f) Subpoena relevant and useful information or individuals; and~~]

(b) Maintain [~~(g) Provide~~] a hearing record complying with KRS 13B.130, and provide a recommendation for final decision by the

hearing authority containing finding of facts, conclusions of law and a recommended disposition. The hearing official shall render a hearing decision in the name of the cabinet in accordance with Section 15 of this administrative regulation.

Section 14. Rights During Hearing. (1) During the hearing process the household or its representative shall be given adequate opportunity to:

(a) Examine all documents and records to be used at the hearing at anytime during working hours before the date of the hearing as well as during the hearing;

(b) Examine the contents of the case file including the application form and documents of verification used by the cabinet to establish the household's ineligibility or eligibility and allotment;

(c) Present the case or have it presented by a legal counsel or other person;

(d) Bring witnesses, friends or relatives;

(e) Advance arguments without undue interference;

(f) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(g) Submit evidence to establish all pertinent facts and circumstances in the case.

(2) Confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, shall be protected from release.

(3) If requested by the household or its representative, the cabinet shall provide a free copy of the portions of the case file that are relevant to the hearing.

(4) Confidential information that is protected from release and other documents or records, not relevant to the hearing, which the household shall not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

Section 15. Hearing Decisions. (1) Decisions of the hearing officer shall comply with federal law and regulation and shall be based on the hearing record.

(2) The contents of the official record for a final decision by the hearing authority shall comply with KRS 13B.090(5) and 13B.130. [~~contain:~~

~~(a) The recording of testimony and exhibits;~~

~~(b) An official report containing the substance of what transpired at the hearing; and~~

~~(c) All papers and requests filed in the proceeding.~~]

(3) This record shall be retained in accordance with 904 KAR 3:050, Section 6.

(4) This record shall be available to the household or its representative during working hours for copying and inspection.

(5) A decision by the hearing authority shall:

(a) Be binding on the cabinet;

(b) Summarize the facts of the case;

(c) Specify the reasons for the decision; and

(d) Identify:

1. The supporting evidence;

2. The pertinent state administrative regulation; and

3. Corresponding federal regulation.

(6) The decision shall become a part of the record.

(7) The household and the local office shall each be notified in writing of:

(a) The decision;

(b) The reasons for the decision;

(c) The available appeal rights;

(d) The issuance or termination of the household's benefits as decided by the hearing authority; and

(e) The fact that an appeal may result in a reversal of the decision.

(8) The household shall be notified of the right to appeal its case to the appeal board in accordance with Section 17 of this administrative regulation.

Section 16. Implementation of Hearing Decision. (1) The cabinet shall ensure that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in Section 3 of this administrative regulation.

(2) If the hearing authority determines that a household has been improperly denied program benefits, or has been issued a lesser allotment than was due, lost benefits shall be provided to the household.

(3) The cabinet shall restore benefits to a household that leaves the county before the departure if possible.

(4) If benefits are not restored prior to the household's departure, the county office shall forward an authorization for benefits to the household or to the new county office if known.

(5) The county office shall accept an authorization and issue the appropriate benefits whether the authorization is:

(a) Presented by the household; or

(b) Received directly from another county office.

(6) When the hearing authority upholds the cabinet's action, a claim against the household for any overissuances shall be prepared.

Section 17. Appeal Board. (1) A household dissatisfied with the hearing officer's decision may appeal to the appeal board within twenty (20) days from the date of the hearing decision.

(2) Within forty-five (45) days of receipt of the request for an appeal of a fair hearing decision, the cabinet shall ensure that:

(a) The review is conducted; and

(b) A decision is reached.

(3) The decision shall be reflected in the coupon allotment within ten (10) days of the decision.

(4) After notification of a hearing decision which upholds the cabinet's action, the household shall be notified of the right to pursue judicial review of the decision pursuant to KRS 13B.040.

Section 18. Judicial Review. A household aggrieved by the appeal board's decision shall have the right to appeal this decision to the circuit court of appropriate jurisdiction pursuant to KRS 13B.040.

Section 19. Material Incorporated by Reference. (1) Form PAFS-78, revised 3/95, is required for a fair hearing.

(2) This form may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: April 1, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by May 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: W.K. Moore, Acting General Counsel, Office of Counsel, Cabinet for Health Services, 275

East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The amendment will not directly affect any entities. It is merely removing duplication of language between what is currently in the administrative regulation and adding references to KRS Chapter 13B where appropriate.

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested and no comments were received.

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

1. First year following implementation: No additional factors as a result of this amendment.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None, we are just removing duplicative language from the administrative regulation.

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional 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: 50% federal funding/50% state 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) Geographical area in which administrative regulation will be implemented: No public hearing was requested and no comments were received.

(b) Kentucky: No public hearing was requested and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternatives are available. KRS Chapter 13B mandates the revisions being made to this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None other than bringing the administrative regulation into compliance with KRS Chapter 13B.

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

(c) If detrimental effect would result, explain detrimental effect:

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The federal statute a 7 USC 2014(b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. KRS Chapter 13B

3. Minimum or uniform standards contained in the Federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)

906 KAR 1:060. Nursing pool hearings.

RELATES TO: KRS 216.860, 216.865

STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 194.030(12)(b), 216.865, EO 95-79

NECESSITY AND FUNCTION: KRS 216.865 states that the Secretary of the Cabinet for Health Services [~~Human Resources~~] shall adopt administrative regulations relating to licensure fees, standards of care and service, and procedures for enforcement of penalties for nursing pools. The Office of Inspector General has been designated the promulgating agency in accordance with KRS 194.030(12)(b). This administrative regulation sets forth the hearing process for appeals of negative licensure actions related to nursing pools. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Hearing officer" is defined in KRS 13B.010(7).

(3) "Negative licensure action" means an action by the cabinet to revoke, modify, suspend or deny relicensure of a nursing pool.

[~~(2) "Hearing officer" means the person designated by the Secretary of Human Resources to conduct a hearing and make a recommendation to the cabinet on any appeal of negative licensure action.~~]

Section 2. (1) Any nursing pool may appeal negative licensure action taken by the cabinet by notifying the cabinet [~~for Human Resources~~] within twenty (20) days of the issuance of notice of

negative licensure action. Upon receipt of notice of appeal, the secretary of the cabinet [~~for Human Resources~~] shall designate a hearing officer.

(2) Notice of hearing shall be served on [~~mailed to~~] the nursing pool not less than twenty (20) [~~ten (10)~~] days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative licensure action, and shall comply with KRS 13B.050(3). The notice of hearing shall be served [~~mailed~~] by certified mail, return receipt requested to the nursing pool, or by personal service.

(3) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which may avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as may aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences shall be open to the public. A written prehearing order shall be part of the record.

(4) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

~~[(3) The nursing pool and the cabinet may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.~~

~~(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.~~

~~(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.]~~

(5) [~~(6)~~] The hearing officer shall make a recommended order [~~written recommendation~~] to the cabinet including written findings of fact, [~~and~~] conclusions of law, and a recommended decision. With the recommended order [~~recommendation~~], the hearing officer shall forward to the cabinet the record consisting of those items listed in KRS 13B.130, including all documents, exhibits and recorded testimony introduced in the hearing.

(6) [~~(7)~~] The cabinet shall issue a final determination of licensure status within thirty (30) [~~ten (10)~~] days of the receipt of the recommendation of the hearing officer.

(7) In addition to the grounds for disqualification as set forth in KRS 13B.040(2)(b), [~~(8)~~] no hearing officer shall participate in any hearing involving a nursing pool with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 21, 1996, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 16, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4th West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau/David Crane

(1) Type and number of entities affected: Nursing pools provide temporary employment in health care facilities for medical personnel including nurses, nursing assistants, nurses' aides, and orderlies. There are presently 43 licensed nursing pools.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

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

1. First year following implementation: Minimal
2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: Minimal
2. Continuing cost or savings: Minimal
3. Additional factors increasing or decreasing costs: Since this is a licensure hearing regulation, legal costs will be incurred.

(b) Reporting and paperwork requirements: Legal paperwork involved in the hearing process.

(4) Assessment of anticipated effect on state and local revenues: Minimal

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation establishes an appeals procedure for negative licensure actions.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: KRS Chapter 13B amendments to this administrative regulation should have only a minor impact.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not used because licensure hearings must utilize consistent procedures.

CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)

906 KAR 1:080. Standards for utilization review.

RELATES TO: KRS 211.461 to 211.466, 211.990, 304.17-412, 304.18-045, 304.32-147, 304.32-330, 304.38-225, 311.131 to 311.139, 311.990,

STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 194.050, 216B.042, EO 95-79

NECESSITY AND FUNCTION: KRS 216B.042 mandates that the Kentucky Cabinet for Health Services [~~Human Resources~~] regulate health facilities and health services. KRS 211.464 and 311.133 mandate that the Kentucky Cabinet for Human Resources promulgate administrative regulations to implement the program necessary to register private review agents. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) [~~"Dispute resolution" is a procedure to resolve utilization review disputes between private review agents and health care providers and patients.~~

~~(2)~~] "Board" means the American Boards of Medical Specialists.

(2) "Cabinet" means Cabinet for Health Services.

(3) "Dispute resolution" is a procedure to resolve utilization review disputes between private review agents and health care providers and patients.

(4) "Hearing officer" is defined in KRS 13B.010(7).

[~~(3) "Utilization review procedures" means a professionally developed set of objective standards used to evaluate proposed or delivered medical services not including descriptions and names of review criteria, the release of which is governed by KRS 311.133(2).~~]

(5) [~~(4)~~] "Policies and procedures" means the principles that are involved in the overall administration of the utilization review program, the release of which is governed by KRS 211.464(3).

(6) [~~(5)~~] "Qualified personnel" means licensed physician, registered nurse, licensed practical nurse, medical records technician, or other personnel who through training and experience shall render consistent decisions based on the review criteria.

(7) "Utilization review procedures" means a professionally developed set of objective standards used to evaluate proposed or delivered medical services not including descriptions and names of review criteria, the release of which is governed by KRS 311.133(2).

Section 2. Applicability. Private review agents shall not conduct utilization review unless issued a certificate of registration by the cabinet. All private review agents shall comply with the certification requirements within ninety (90) days after the effective date of this administrative regulation. [~~This administrative regulation shall not apply to the payment of medical benefits governed by KRS Chapter 342.~~]

Section 3. Certificates Required; Transferability, and Reporting Requirements. (1) Certification required pursuant to Section 2 of this administrative regulation shall be renewed every two (2) years.

(2) The cabinet shall issue a certificate of registration to an applicant that has met all statutory provisions and the requirements of this administrative regulation.

(3) A certificate issued under this administrative regulation is not transferable.

(4) An applicant seeking certification or certificate holder seeking renewal shall:

(a) Submit an application on forms that the cabinet requires; and

(b) Pay an application fee of $500.

(5) An application for certification shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.

Section 4. Application Process. (1) Each private review agent shall file an application with the cabinet which shall meet the requirements established by KRS 211.464-465 and 311.135 including the following specific information:

(a) A utilization review plan that includes the statutory provisions in KRS 211.464, 311.135 and the following elements of review:

1. Information utilized for preadmission, admission or readmission;

2. Information utilized for preauthorization; and

3. Information utilized for continued stay authorization.

4. Utilization review procedures and policies and procedures for each of the above listed elements of review used to evaluate proposed or delivered medical services including:

a. Time frames for review;

b. A written summary describing the review process and required forms;

c. Documentation of qualifications of personnel who developed the specific utilization review procedures relating to specialty and subspecialty areas;

d. Descriptions and names of review criteria upon which utilization review decisions are based; and

e. Additional standards, if any, for the consideration of special circumstances.

5. A description of instances, if any, in which utilization review may be delegated to a hospital utilization review program.

6. The manner in which the private review agent provides notice of denial, including:

a. Time frames for issuing decisions;

b. The provision of a written notice following any telephone notifications; and

c. The content of notices, including:

(i) Form used; and

(ii) Reasons for denial.

7. A summary or abstract of the procedure by which patients and providers can appeal adverse decisions including:

a. Time frames for conducting review of initial decision and for issuing reconsideration decision;

b. Procedures for expediting appeals for hospitalized patients awaiting treatment; and

c. Qualifications of the person or persons conducting reconsideration of initial decision.

(b) Types and qualifications of personnel performing utilization review including:

1. A list of three (3) individuals responsible for the operation of the private review agency;

2. Names, addresses, and telephone numbers of persons to contact for various elements and aspects of review; and

3. Qualification of personnel employed directly or under contract by various job category.

(c) Assurances that a toll free line will be provided for patients, hospitals, and physicians to contact the private review agent and policies and procedures to assure that a representative of the private review agent shall be reasonably accessible at least five (5) days per [~~A~~] week, forty (40) hours per [~~A~~] week during normal business hours in this state which shall include:

1. The manner in which the private review agent may be contacted in the case of emergency admissions if preauthorization by the private review agency is required for emergency admissions; and

2. The manner in which the private review agent may be contacted to review weekend admissions if preauthorization is required by the private review agency on weekends.

(d) Policies and procedures to protect confidentiality of patient information.

(e) A copy of the form materials designed to inform applicable patients and providers of the requirements of the utilization review

plan, including:

1. Materials that explain requirements that patients shall [~~must~~] meet and specific penalties for noncompliance;

2. Requirements for review of emergency admissions and the procedure for obtaining such review;

3. Telephone numbers and hours of operation of the private review agent and how to contact the agency for a review determination after normal business hours if required by the private review agency; and

4. Appeal rights to challenge denials.

(f) A listing of the third party payers for which the private review agent is performing utilization review in this state.

(2) Application review procedure. Upon receipt of an application for issuance or renewal of a certificate of registration the cabinet shall:

(a) Notify applicant by letter of receipt of the application and inform the applicant that supplemental information is or is not needed;

(b) Review the application and material required by KRS 311.135 and 211.464 and this administrative regulation; and

(c) Approve or deny issuance or renewal of certificate of registration within sixty (60) days.

Section 5. Evidence of Compliance. In taking action to approve applications for registration or renewal, the cabinet shall determine whether the applicant has demonstrated evidence of compliance with statutory or regulatory requirements including the following:

(1) In determining whether a private review agent has available sufficient and appropriate staff with appropriate supervision to conduct utilization review, the following shall be deemed evidence of compliance:

(a) Only qualified personnel shall approve positive utilization review decisions;

(b) Only licensed physicians shall issue denials; and

(c) Only licensed physicians shall supervise personnel conducting case review.

(2) In determining whether a private review agent's procedures will effect timely reconsideration or appeal, the following shall be evidence of compliance:

(a) Reconsideration shall only be conducted by a licensed physician who did not participate in the initial review and denial. However, in the case of a review involving a medical or surgical specialty or subspecialty, if the denial is upheld upon reconsideration without the use of a board eligible or certified physician in the appropriate specialty or subspecialty area, the utilization review agent shall, upon request by a patient or provider, utilize a board eligible or certified physician in the appropriate specialty or subspecialty area before the final denial is issued;

(b) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers given the opportunity to present additional information; and

(c) An expedited appeals process shall provide for hospitalized patients awaiting treatment with decisions rendered no later than three (3) working days after the request for the expedited appeal.

(3) In determining the adequacy of the manner in which private review agents provide notice of denials, the following shall be evidence of compliance:

(a) Notice of review decisions shall be provided to the patient, hospital, and physician in accordance with the time frames set out in KRS 211.463; and

(b) Notices of denials shall contain an abstract of the reasons for denial including the following:

1. For medical necessity denials, a statement of the medical reasons, name, state of licensure and medical license number of the reviewer, and appeal rights; and

2. For technical (contractual) denials, the reason, and appeal rights.

Section 6. Denial or [~~/~~] Revocation Hearing Procedure. Before the cabinet denies an application for issuance or renewal of a certificate of registration, or revokes an existing certificate of registration, it shall:

(1) Give written notice of its proposed action and advise the applicant or certificate holder that a written request for a hearing may be filed within seven (7) calendar days of the cabinet's notice;

(2) Upon receipt of the written request, the cabinet shall designate a [~~appoint an impartial~~] hearing officer;

(3) Notice of hearing shall be served on [~~mailed to~~] the applicant or certificate holder not less than twenty (20) [~~fourteen (14)~~] days prior to the commencement of the hearing. The notice of hearing shall comply with KRS 13B.050. [~~contain the information necessary to conduct the hearing and the initial reasons for the action.~~] The notice of hearing shall be served [~~delivered~~] by certified mail, return receipt requested, or by personal service;

(4) The hearing shall [~~must~~] be held within thirty (30) calendar days from the receipt of the written request for a hearing;

(5) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which may avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as may aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences shall be open to the public. A written prehearing order shall be part of the record.

(6) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

[~~(5) The applicant or certificate holder and the cabinet may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions.~~] The cabinet shall have the authority to request any relevant information from the utilization review agent including any criteria utilized for review. [~~No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice;~~

~~(6) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript;~~]

(7) The hearing officer shall make a recommended order [~~written recommendation~~] to the cabinet including written findings of fact, [~~and~~] conclusions of law, and a recommended decision. With the recommended order [~~recommendation~~], the hearing officer shall forward to the cabinet the record consisting of those items listed in KRS 13B.130, including all documents, exhibits and recorded testimony introduced in the hearing;

(8) The cabinet shall issue a final determination within thirty (30) days of the receipt of the recommendation of the hearing officer;

(9) The cabinet may also order a monetary penalty in accordance with KRS 211.990 and KRS 311.990; and

(10) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 311.138.

Section 7. Complaint Process. (1) Within ten (10) days of the receipt of a written complaint, a copy shall [~~will~~] be sent to the private review agency which shall [~~will~~] have ten (10) days to document that the complaint has or has not been reconciled through the internal appeal or [~~/~~] grievance process. If the cabinet does not receive such documentation or the complaint has not been reconciled then a copy of the complaint and a letter from the cabinet shall [~~will~~] be sent to the private review agent requiring the following:

(a) A request for a written reply within ten (10) days;

(b) A statement of the incident or problem;

(c) Any pertinent information including any criteria directly relating to the incident or problem; and

(d) Corrective actions, if any, with time frames.

(2) Within ninety (90) days of receipt of a written complaint, the cabinet shall [~~will~~] investigate the complaint, and shall present a written response to the complainant and the private review agent. This response shall include the following:

(a) A statement of the original complaint;

(b) A determination of findings by the cabinet;

(c) Corrective actions, if any, on the part of the private review agent which the cabinet finds appropriate; and

(d) A monetary penalty, if any, in accordance with KRS 211.990 and 311.990; and

(e) A time frame in which any corrective actions are to be completed.

Section 8. Dispute Resolution Procedure. (1) The cabinet is charged with responsibility to establish a process to resolve utilization review disputes between private review agents and health care providers and patients;

(2) Upon receipt of written notice of a dispute, the cabinet shall designate a [~~appoint an impartial~~] hearing officer;

(3) Notice of hearing shall be served [~~mailed~~] not less than twenty (20) [~~fourteen (14)~~] days prior to the commencement of the hearing. The notice of hearing shall comply with KRS 13B.050. [~~contain the information necessary to conduct the hearing.~~] The notice of hearing shall be served [~~delivered~~] by certified mail, return receipt requested, or by personal service;

(4) The hearing shall [~~must~~] be held within thirty (30) calendar days from the receipt of a written request for a hearing;

(5) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which may avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as may aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences shall be open to the public. A written prehearing order shall be part of the record.

(6) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

[~~(5) The parties may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions.~~] The cabinet shall have the authority to request any relevant information from the review agent including any criteria which directly relates to the dispute. [~~No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice;~~

~~(6) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript;~~]

(7) The hearing officer shall make a recommended order [~~written recommendation~~] to the cabinet including findings of fact, [~~and~~] conclusions of law, and a recommended decision. With the recommended order [~~recommendation~~], the hearing officer shall forward to the cabinet the record consisting of those items listed in KRS 13B.130, including all documents, exhibits and recorded testimony introduced in the hearing; and

(8) The cabinet shall issue a final determination within thirty (30) days of the receipt of the recommendation of the hearing officer.

Section 9. Reporting Requirements. All private review agents shall, as a condition of registration, submit reasonable and pertinent reports as required by the cabinet. Completed reports shall be submitted within forty-five (45) days of the date of the request.

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 21, 1996, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 16, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4th West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau/David Crane

(1) Type and number of entities affected: Private review agents review medical necessity and appropriateness of hospital resources and medical services to determine the availability of payment. There are presently 210 registered private review agents.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

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

1. First year following implementation: Minimal
2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: Minimal
2. Continuing cost or savings: Minimal
3. Additional factors increasing or decreasing costs: No additional requirements.

(b) Reporting and paperwork requirements: Issuance of a certificate to registered agents and maintenance of a list of registered agents.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 211.464 and 311.133 mandate the promulgation of administrative regulations to implement the program registering private review agents.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: KRS Chapter 13B amendments to this administrative regulation should

have only a minor impact.

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

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

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: KRS 211.464 and 311.133

(a) Necessity of proposed regulation if in conflict: Both statutes mandate the cabinet to promulgate regulations to implement the program.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not used because all private review agents are required to meet the same minimum standards.

CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)

906 KAR 1:100. Nurse aide registry, abuse registry and hearing procedures.

RELATES TO: KRS Chapter 209, 216.860, 216.865

STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 194.030(12)(b), 216.865, 42 CFR 483.75, 483.150-.158, EO 95-79

NECESSITY AND FUNCTION: KRS 216.865 states that the Secretary of the Cabinet for Health Services [~~Human Resources~~] shall adopt administrative regulations relating to licensure fees, standards of care and service, and procedures for enforcement of penalties. The Office of Inspector General has been designated the promulgating agency in accordance with KRS 194.030(12)(b). The Cabinet for Health Services [~~Human Resources (cabinet)~~], as part of its agreement with the Health Care Financing Administration [~~(HCFA)~~], shall [~~must~~] establish and maintain a nurse aide registry. As part of that registry, the cabinet shall investigate allegations of resident neglect, abuse and misappropriation of resident property. Within this administrative regulation the cabinet also provides for a hearing and appeals procedure for nurses aides that the cabinet finds reason to include on the abuse registry. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Abuse registry" means a computerized listing of those individual nurse aides who have had an allegation of resident neglect, abuse, or misappropriation of resident property substantiated through the process outlined in this administrative regulation.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Hearing officer" is defined in KRS 13B.010(7).

(4) "Misappropriation" means exploitation as defined by KRS 209.020(8).

(5) "Nurse aide registry" means a computerized registry of those individuals who have successfully met the requirements of the Kentucky Department for Medicaid Services nurse aide training and competency evaluation program.

[~~(3) "Misappropriation" means exploitation as defined by KRS 209.020(8).~~]

Section 2. Nurse Aide Registry. (1) The cabinet shall establish a nurse aide registry of individuals who have satisfactorily completed a state-approved nurse aide training and competency evaluation program.

(2) The registry shall include [~~(as a minimum)~~] the following:

(a) Name;

(b) Social Security number;

(c) Address;

(d) Date nurse aide was placed on the nurse aide registry; and

(e) Abuse registry indicator.

(3) If there is a twenty-four (24) month period during which the aide has not performed nursing related functions for compensation, the nurse aide's name shall be removed from the nurse aide registry.

(4) Required documentation of the nurse aide.

(a) Prior to the two (2) year anniversary date of nurse aide being placed on the nurse aide registry, the cabinet shall send a letter to the nurse aide. This letter shall request proof of employment (such as a pay stub, W-2 form or a letter from an employer) as a nurse aide performing nursing or nursing related functions within the past twenty-four (24) months.

(b) If the nurse aide provides documentation, then the individual's record shall remain in good standing.

(c) If the nurse aide does not respond to the [~~this~~] letter specified in paragraph (a) of this subsection, it shall be noted in the individual's record that the individual is not in good standing. An individual shall regain good standing by providing the following information:

1. Current address; and

2. Documentation that the individual has performed nursing or nursing related functions for compensation within the past twenty-four (24) months.

(d) If a nurse aide is not in good standing and does not [~~cannot~~] provide the necessary documentation within thirty (30) days after contacting the nurse aide registry, the individual's name shall be removed from this registry.

(5) If an individual's name has been removed from the nurse aide registry, the individual shall [~~must~~] complete the Medicaid nurse aide training and competency evaluation or competency evaluation before being placed back on the nurse aide registry.

Section 3. Abuse Registry, Notice, and Hearing Rights. (1) The cabinet shall establish an abuse registry to include information pertaining to findings of resident neglect, abuse, and misappropriation of resident property by a nurse aide.

(2) The cabinet shall investigate all allegations, and if an allegation is found to be substantiated, the implicated individual will be notified by mail of the following:

(a) The preliminary finding;

(b) The opportunity to make a written response to appear on the abuse registry concerning the cabinet's findings;

(c) The hearing procedure and appeal rights; and

(d) The intent to report the findings to the abuse registry after they become final.

(3) Within thirty (30) working days of the date that the cabinet makes a preliminary finding and mails the notice, the implicated individual may file a written request for a hearing with the secretary of the cabinet. If a request for a hearing is not filed, the findings of the cabinet's shall be considered final and shall be placed on the abuse registry. The notice shall be delivered by certified mail.

(4) The abuse registry shall include a summary statement, if any, by the individual disputing the findings. Any disclosure made in response to inquiries to the registry shall include all findings and the summary statement.

(5) If the cabinet's preliminary finding of neglect, abuse or misappropriation of resident property is found unsubstantiated in the hearing process outlined in this administrative regulation, then:

(a) The individual's name shall [~~will~~] not be placed on the abuse registry in regards to this specific case; and

(b) The [~~individual will be notified by the~~] cabinet shall send a letter of notification to the individual.

(6) If the cabinet's preliminary finding of neglect, abuse or misappropriation of resident property is found substantiated in the

hearing process, the cabinet shall place the individual's name and adverse findings on the abuse registry.

(7) If the cabinet's finding of neglect, abuse or misappropriation of resident property is overturned through the exercise of the individual's due process rights [~~through adjudication or arbitration~~], then:

(a) The individual's name and accompanying information shall [~~will~~] be removed from the abuse registry in regards to this specific case; and

(b) The nurse aide shall be notified of this action by the cabinet.

(8) A nurse aide shall have the opportunity to correct any misstatements or inaccuracies in the individual nurse aide's record.

Section 4. Hearing Procedure. The hearing procedure shall provide the final finding of the cabinet in regards to resident neglect, abuse and misappropriation of resident property by a nurse aide.

(1) Upon receipt of the written request, the secretary shall designate a [~~appoint an impartial~~] hearing officer.

(2) Notice of hearing shall be served on [~~mailed to~~] the individual not less than twenty (20) [~~fifteen (15) working~~] days prior to the commencement of the hearing. The notice of hearing shall comply with KRS 13B.050. [~~contain the reasons for the action.~~] The notice of hearing shall be served [~~delivered~~] by certified mail, return receipt requested, or by personal service.

(3) The hearing shall [~~must~~] be held as soon as practicable after [~~within sixty (60) calendar days from~~] the receipt of the written request for a hearing.

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which may avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as may aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences shall be open to the public. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

[~~(4) The individual and the cabinet may be represented by counsel, or other persons representing the individual's interest, and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.~~

~~(5) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.~~

~~(6) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.~~]

(6) [~~(7)~~] The hearing officer shall make a written determination as to the validity of the cabinet's finding. This determination shall include findings of fact and conclusions of law. With the determination, the hearing officer shall forward to the cabinet the record consisting of those items listed in KRS 13B.130, including all documents, exhibits and recorded testimony introduced in the hearing.

(7) [~~(8)~~] The hearing officer's determination shall be the final finding of the cabinet. The cabinet shall forward this finding to the nurse aide within ten (10) days of the receipt of the determination of the hearing officer.

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary

APPROVED BY AGENCY: April 4, 1996
FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 21, 1996, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 16, 1996, of their desire to appear and testify at the hearing: William K. Moore, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4th West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: 47,186 registered nurse aides.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received but no impact expected.

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

1. First year following implementation: Minimal
2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: Minimal additional costs associated with public hearings.
2. Continuing cost or savings: Minimal
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No comments on this subject were received but no impact expected.

(b) Kentucky: No comments on this subject were received but no impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation implements a mandated federal program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: KRS Chapter 13B amendments to this administrative regulation should have only a minor impact.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not used because all nurse aides are required to meet the same minimum standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 483.

2. State compliance standards. 902 KAR 20:300 - Operation and services; nursing facilities; 906 KAR 1:100 - Nurse aide registry, abuse registry, and hearing procedures.

3. Minimum or uniform standards contained in the federal mandate. Federal standards include: resident rights, admission and discharge rights, resident behavior and facility practices, quality of life, resident assessment, quality of care, nursing services, dietary services, physician services, specialized rehabilitation services, dental services, pharmacy services, infection control, physical environment, administration, and nurse aide training requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? No. The standards outline the state process for compliance with the mandated federal program.

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

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(Amendment)

907 KAR 1:320. Kentucky patient access and care system KenPAC.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, d, n, EO 95-79

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 terms and conditions under which the Department for Medicaid Services [cabinet] shall provide Medicaid [medical assistance] pursuant to a waiver granted by the Secretary, United States Department of Health and Human Services providing for a physician primary care case management system.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "Emergency care" means any condition for which a delay in treatment will likely result in recipient's death or permanent impairment of recipient's health.

(3) "Spend-down" means as defined in 907 KAR 1:002.

(4) "Urgent care" means a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

Section 2. [1.] General. The department [cabinet] shall implement, within the Medicaid Program, a physician primary care case management system to be known as the Kentucky Patient Access and Care System (KenPAC). KenPAC shall be implemented and administered in accordance with the terms of the waiver granted by the Secretary, United States Department of Health and Human Services under the authority granted by 42 USC 1396n.

Section 3. [2.] Recipient Participation. All recipients of Aid to Families with Dependent Children (AFDC) and AFDC related medical assistance only shall be required to participate in KenPAC unless excluded as shown in Section 4 [3] of this administrative regulation.

Section 4. [3.] Recipient Exclusions from KenPAC. (1) Excluded from KenPAC shall be individuals:

(a) Who are aged, blind, or disabled (i.e., individuals whose eligibility for Medicaid is based on age, blindness, or disability);

(b) Those who are in mental hospitals, nursing facilities, and personal care homes;

(c) Individuals in foster care or subsidized adoption status;

(d) All spend-down cases; [and]

(e) Refugees; and

(f) All lock-in cases.

(2) Individuals eligible to participate but who reside in a county which does not have an adequate number of primary physicians or clinics participating in KenPAC shall not be required to participate in KenPAC until adequate physician or clinic resources are available in the county. [, although] The department [cabinet] may[, at its option,] choose to permit voluntary participation by recipients in these counties.

Section 5. [4.] Physician Participation. (1) Primary care physicians permitted to participate in KenPAC shall be general practitioners, family practitioners, pediatricians, internists, obstetricians, gynecologists, and doctors of osteopathy.

(2) Clinics may participate if the clinic has at least one (1) full-time equivalent physician who is a primary care physician as shown in subsection (1) of this section. [above;]

(3) Rural health clinics may participate, but shall [are] not be required to have a full-time equivalent primary care physician.

(4) Specialty physicians may participate under extraordinary circumstances if [when] the department [cabinet] determines the participation would be in the best interests of both the recipient and the KenPAC system.

Section 6. [5.] KenPAC Provider Agreements. All participating primary care providers shall be required to sign a KenPAC participation agreement in addition to the standard Medicaid provider agreement and shall be bound by its terms and conditions.

Section 7. [6.] Quotas. Each primary care provider shall be required to specify the number of recipients the provider is willing to serve as primary care case manager. Unless circumstances exist which require the department [cabinet] to authorize a higher quota for a provider to ensure adequate coverage in an area, the upper limit shall be 1,500 recipients per full-time physician. Primary centers and rural health clinics may, in addition, have a quota of up to 300 recipients for each participating advanced registered nurse practitioner (ARNP).

Section 8. [7.] Primary Care Case Management Fees. (1) Each physician or clinic shall receive a management fee of three (3) dollars per month per KenPAC recipient assigned. [for the first 1,000 assigned recipients per full-time equivalent physician; no management fee for the next 500 assigned recipients per full-time equivalent physician; and three (3) dollars per month per recipient for all recipients assigned which are over 1,500 per full-time equivalent physician as specially authorized by the cabinet.]

(2) If a primary care center or rural health center has advanced registered nurse practitioners (ARNP) on staff for whom an additional quota is allowed, the clinic shall be paid a management fee of three

(3) dollars per month per recipient attributed to each ARNP (not to exceed 300 recipients per full-time ARNP), with the balance of the management fee computed in the manner previously specified.

Section 9. [8.] Covered Services Under KenPAC. (1) The following services shall be managed by the primary physician or clinic: physician services, [pharmacy services when the prescription is issued by the primary physician or clinic,] hospital inpatient and outpatient services, home health agency services, laboratory services, ambulatory surgical center services, primary care center services, rural health center (clinic) services, durable medical equipment, other laboratory and x-ray services, physician's component of preventive services, advanced registered nurse practitioner services, and nurse anesthetist services.

(2) The physician services element shall not include services provided by ophthalmologists or psychiatrists or obstetrical services.

(3) All other services available under the Medicaid program shall be secured in the usual manner.

(4) Access to medically necessary emergency services shall not be restricted by KenPAC even though the medical service may customarily be within KenPAC.

(5) Urgent care if [(i.e., when] medical necessity dictates early treatment or hospitalization[)] may be provided without preauthorization from the primary physician or clinic if the primary physician or clinic cannot be reached.

(6) For both emergency and urgent care, authorization shall be obtained from either the primary physician or clinic or the Medicaid Program prior to billing Medicaid for the emergency or urgent care service.

(7) Inpatient hospital services element shall not include psychiatric and obstetrical services.

Section 10. [9.] Recipient Assignment. Each KenPAC recipient shall be afforded the opportunity to select his KenPAC provider from among participating KenPAC providers in his county of residence or any adjacent county. If a voluntary selection is not made, a primary care provider shall be assigned by the Medicaid program.

Section 11. [10.] Phase-in of KenPAC. As adequate physician participation permits, KenPAC shall [will] be phased in to additional counties. Recipients in these counties shall be assigned to the program at the scheduled semiannual or annual reinvestigation if possible.

Section 12. [11.] Hearing and Appeal Rights. Any individual required to participate in KenPAC shall be entitled to the same hearing and appeal rights as are available to any other applicant for or recipient of Medicaid as set forth in 907 KAR 1:560.

Section 13. [12.] Utilization Control. A primary care physician or clinic identified by the department [cabinet] as having an abusive or inappropriate utilization pattern, not consistent with the objectives of KenPAC, shall be removed from KenPAC and denied further participation rights in KenPAC. Any provider so excluded may seek review of the decision in accordance with the KenPAC provider agreement.

[Section 13. Relation to Other Administrative Regulations. The requirements specified herein shall supersede any other administrative regulations issued by the cabinet which are inconsistent with this administrative regulation.]

Section 14. The amendments to this administrative regulation shall be applicable for services provided on or after July 1, 1996.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: April 4, 1996
FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: 14 physicians participating in the Medicaid Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: $123,624 (cost).
2. Continuing costs or savings: $123,624 (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: None

(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: Physician will be more willing to take Medicaid Program's KenPAC recipients; therefore, access and availability for health care will be increased for Medicaid eligible recipients.

(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 a threat to the public health and welfare of Medicaid recipients.

(9) Identify any statute, administrative regulation or government

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions 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.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(Amendment)

907 KAR 1:671. Conditions of Medicaid provider participation; [~~enrollment, documentation of services, disclosure, claims processing,~~] withholding overpayments, appeals process, and sanctions.

RELATES TO: KRS 194.515, 205.510 to 205.990, 42 CFR 431.107, 455, 1002, 1003, 42 USC 1320a-3, a-3a, a-5, a-7, 1395cc, vv, 1396b, d, m, n

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 205.520, 205.560, 205.6318, 42 USC 1396a, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to [~~Human Resources shall~~] 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 205.8451 through 205.990, 205.624 and 194.515 provide that the Cabinet for Health Services [~~Human Resources~~] and the Department for Medicaid Services shall be responsible for the control of Medicaid provider fraud and abuse. KRS 205.520 empowers [~~authorizes~~] 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 Medicaid provider participation.

Section 1. Definitions. (1) "Abuse" means as [~~is~~] defined by KRS 205.8451.

(2) "Administrative process" means meeting, review, investigation, hearing, appeal, deliberation or exchange of documents or information between the provider and the department.

(3) "Affiliate" means an individual agency or organization controlled by the provider or associated with the provider under common ownership or control.

(4) "Applicant" means a person or entity who submits an application to become a Medicaid provider.

(5) "Application" means the completion and submission of a Medicaid provider agreement and any required addendum specific to a provider type, which is the contract between the provider and the department [~~cabinet~~] for the provision of Medicaid services.

(6) "Billing agent" means a contractor that prepares and submits claims on behalf of the provider.

(7) "Bribes and kickbacks" means soliciting or receiving any payment, or offering or making any payment whether in cash or goods or services, in return for:

(a) Referring a recipient to a provider for any medical care, services or supplies; or

(b) Purchasing, leasing, ordering or recommending any medical care, services or supplies, for which payment is claimed under the Medicaid Program.

(8) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~].

(9) "Claim" means any request for payment under the Medicaid Program that [~~, and~~] relates to each individual billing submitted by a provider to the department which details services rendered to a [~~an individual~~] recipient on a specific [~~given~~] date(s) [~~or dates of service~~]. The claim may be either a line item of service or all services for one (1) recipient on [~~within~~] a bill.

(10) "Conversion" means converting a Medicaid payment, or any part of a payment, to a use or benefit other than for the use and benefit intended by the Medicaid Program.

(11) "Convicted" means as defined [~~shall have the same meaning as that shown~~] in KRS 205.8475, regardless of whether an appeal from that judgment is pending.

(12) "Demand letter" means correspondence to an active or inactive provider stating a dollar amount is owed the program and shall be paid by a given date.

(13) "Department" means the Department for Medicaid Services and its designated agents [~~(including any contract agents)~~].

(14) [~~(13)~~] "Disclosing entity" means a Medicaid provider or the fiscal agent for the department.

(15) [~~(14)~~] "Disclosure" means the provision of information in accordance with the requirements shown in 42 CFR 455, Subpart B.

(16) [~~(15)~~] "Exclusion" means the termination of the participation of a provider or the denial of the enrollment of a provider[~~; and no reimbursement shall be made to the provider under Medicaid for~~

~~items or services furnished by the provider during any period of exclusion~~].

(17) [~~(16)~~] "Factor" means as defined [~~shall have the same meaning as shown~~] in 42 CFR 447.10.

(18) [~~(17)~~] "False claim" means a claim for:

(a) Unfurnished medical care, services, or supplies; or

(b) Medical care, services, or supplies provided:

1. In excess of accepted standards of practice for the medical service [~~that was provided~~];

2. In [~~an amount in~~] excess of established limits which were communicated, in writing, [~~by prior written notice~~] to providers by the department; or

3. Where there is documentation that the provider has knowledge of third-party coverage of the recipient, but the provider knowingly chooses not to bill the third-party payer.

(19) [~~(18)~~] "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.

(20) [~~(19)~~] "Full investigation" means the activities of Kentucky's [~~the~~] Medicaid Fraud and Abuse Control Unit of the Office of the Attorney General (MFACU) or any other law enforcement or investigative agency utilized to resolve a complaint of Medicaid fraud or abuse [~~(if the abuse involves substantial allegations or other indications of fraud)~~].

(21) [~~(20)~~] "Furnish" means to provide medical care, services, or supplies that are:

(a) Provided directly by the provider;

(b) Provided under the supervision of the provider; or

(c) Prescribed by the provider.

(22) "Knowingly" means as defined in KRS 205.8451.

(23) [~~(21)~~] "Managing employee" means the general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who conducts the day-to-day operation of, an institution, organization, or agency.

(24) [~~(22)~~] "Medicaid Fraud and Abuse Control Unit" (MFACU) means a [~~the~~] unit [~~of staff~~] in the Office of the Attorney General of Kentucky, certified under the provisions of 42 USC 1396b(q). MFACU [~~, which~~] conducts a statewide program for the investigation and prosecution of violations of all state laws regarding fraud and abuse in connection with the [~~provision of~~] Medicaid Program [~~services and the activities of Medicaid providers~~].

(25) "Merit system" means an employee covered by KRS Chapter 18A.

(26) [~~(23)~~] "Preliminary investigation" means the activities of the Office of Inspector General (OIG), MFACU, or the department to determine whether a complaint of Medicaid fraud or abuse has sufficient basis to warrant a full investigation.

(27) [~~(24)~~] "Provider" means as [~~is~~] defined by KRS 205.8451.

(28) [~~(25)~~] "Recipient" means as [~~is~~] defined by KRS 205.8451.

(29) [~~(26)~~] "Reliable evidence" means:

(a) Preliminary determinations based on a preponderance of evidence as verified by the department by audit, [~~or utilization review staff~~] of unacceptable practices or significant overpayments;

(b) Information of an ongoing investigation of a provider based on a preponderance of evidence, as verified by the department [~~cabinet~~], involving fraud or criminal conduct pertaining to the Medicaid Program.

(c) Information based on a preponderance of evidence, as verified by the department [~~cabinet~~], from a state professional medical licensing or certifying agency of an ongoing investigation of a Medicaid provider involving fraud, abuse, professional misconduct, unprofessional conduct, or utilization; or

(d) Information from the department [~~staff~~] or other sources based on a preponderance of evidence[~~, as verified by the cabinet,~~] regarding unacceptable practices or program abuse.

(30) [~~(27)~~] "Sanction" means any administrative action taken by the department which limits a person's or a provider's participation in the Medicaid Program or imposes a fiscal penalty against the provider, including the imposition of civil penalties, and interest imposed at the department's discretion and the withholding of future payments. [~~Sanctions which may be imposed are described in KRS 205.8467 and Section 9 of this administrative regulation.~~]

(31) [~~(28)~~] "Services" means medical care, services, or supplies provided to Medicaid recipients [~~under Medicaid~~].

(32) [~~(29)~~] "Subcontractor" means an individual, agency, or organization to which a disclosing entity has:

(a) Contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) Has entered into a contract, agreement, purchase order or lease including real property, to obtain space, supplies, equipment or nonmedical services provided under the Medicaid Program.

(33) [~~(30)~~] "Supplier" means an individual, agency, or organization from which a provider purchases goods or services used in carrying out its responsibilities under the Medicaid Program.

(34) [~~(31)~~] "Terminated" means the provider's participation in the Medicaid Program has been ended, and that a contractual relationship no longer exists between the provider and the department for the provision of Medicaid covered services to Medicaid eligible recipients by that individual, entity, or organization.

(35) [~~(32)~~] "Unacceptable practice(s)" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in KRS 205.8451(2) or (8), or willful misrepresentation, and includes the following practices:

(a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, any person to submit false claims;

(b) Knowingly making, or causing to be made, or inducing, or seeking to induce, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of any event that affects [~~affecting~~] the right [~~to payment~~] of any provider to receive payment(s) and concealing or failing to disclose the event with the intention that an unauthorized [~~a~~] payment(s) be made [~~when not authorized~~] or the payment is made in a greater amount than owed [~~due~~];

(d) Conversion;

(e) Soliciting or accepting bribes or [~~and~~] kickbacks;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements as contained in 907 KAR 1:673, Section 4 [~~of this administrative regulation~~];

(g) Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a provider who has been terminated or excluded from the program [~~sanctioned provider~~];

(h) Seeking or accepting additional payments, for example, [~~such as~~] gifts, money, donations, or other consideration, in addition to the amount paid or payable under the Medicaid Program for any covered medical care, services, or supplies for which a claim is made;

(i) Charging or agreeing to charge or collect any fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program, except for any required copayments, or recipient liability, [~~(~~]if any, [~~)~~] as required by the Medicaid Program;

(j) Engaging in conspiracy, complicity, or criminal syndication;

(k) Furnishing medical care, services, or supplies that fail to meet professionally recognized standards, or which are found to be noncompliant with licensure standards promulgated under KRS Chapter 216B and failing to correct the deficiencies or violation as reported to the department by the Office of Inspector General, Division of Licensure and Regulation, for health care or which are beyond the scope of the provider's professional qualifications or licensure;

(l) Illegally discriminating in the furnishing of medical care, services, or supplies based on a recipient's age, color, creed,

disability, ethnicity, gender, marital status, [~~race, color,~~] national origin, race, religion, or sexual orientation [~~sex, age, disabling condition, or marital status~~];

(m) Having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 CFR 447.10;

(n) Offering or providing any premium or inducement to a recipient in return for the recipient's patronage of the provider or other provider to receive medical care, services or supplies under the Medicaid Program;

(o) Knowingly failing to meet disclosure requirements;

(p) Unbundling; and

(q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

(36) [~~(33)~~] "Unbundling" means submitting multiple claims for constituent parts of services provided which results in enhanced reimbursement to a provider for a covered service where the claims do not conform with professionally recognized coding standards;

(37) [~~(34)~~] "Withholding" means not paying a provider for claims which have been processed, pending the results of an investigation of a report of fraud or willful misrepresentation based upon receipt of reliable evidence or [~~. Withholding may also occur~~] as a result of provider bankruptcy, failure to submit timely cost reports, or closure or [~~(~~]termination[~~)~~] of a business.

[~~Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.~~

~~(a) The department shall contract with only those providers or entities who can demonstrate that they are qualified as determined by the cabinet to participate as a provider. The department reserves the right to contract or not contract with any potential provider.~~

~~(b) All providers or entities who wish to participate in the Medicaid Program shall be enrolled as participating providers prior to being eligible to receive reimbursement.~~

~~(2) New enrollments. Any provider or entity interested in participating as a Medicaid provider on or after the effective date of this administrative regulation shall be required to submit an application for enrollment in accordance with this section.~~

~~(3) Enrolled providers. All providers or entities enrolled as participating providers in Medicaid prior to the effective date of this administrative regulation shall continue to be participating providers on the effective date of this administrative regulation. Upon receiving notice from the department, existing providers shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.~~

~~(a) Providers shall have thirty five (35) days from the date of the notice to submit a completed and signed application to the department.~~

~~(b) The notice shall inform the provider that failure to return the completed and signed application within thirty five (35) days shall result in termination of participation.~~

~~(c) Submission of the application within thirty five (35) days shall permit the continuation of the existing provider participation which shall remain in effect until a determination with respect to the application for enrollment has been made and notice of approval or denial of enrollment sent to the provider.~~

~~(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and re-enroll providers if necessary for effective management of the Medicaid Program.~~

~~(4) Application for enrollment as a participating provider shall be processed in the following manner:~~

~~(a) All applicants for participation shall complete a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity (pursuant to 31 USC 1352), provide proof of a currently valid professional license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application for participation.~~

~~(b) The department may require any additional clarifying information from the applicant with regard to qualifications for participation. If the applicant does not respond within the time period specified in the request, the application for participation may be denied unless an extension of time is requested and granted.~~

~~(c) The department may require that an on site inspection be performed to ascertain compliance with applicable licensure standards as promulgated under KRS Chapter 216B, and certification standards, prior to an enrollment determination.~~

~~(d) The department shall complete its application review and determine whether or not to enroll the applicant within ninety (90) days after receipt of the completed application and any additional clarifying information requested by the department. The department may take additional time for the decision when necessary for resolution of issues or disputes.~~

~~(5) Approval of an application.~~

~~(a) Upon approval of an application, the provider shall be issued an identifying number to be used exclusively by the provider for billing and identification purposes.~~

~~(b) A provider's participation shall begin on the date specified in the notification of approval of program participation and continue for the period specified in the notification, unless the provider participation is otherwise terminated in accordance with this administrative regulation or other applicable state or federal laws.~~

~~(6) By enrolling, the provider, its officers, directors, agents and employees (and all subcontractors pursuant to written agreement made a part of the contract) agrees to:~~

~~(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;~~

~~(b) Furnish all information regarding the nature and extent of services and claims for payment submitted by, or on behalf of, the provider to representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney upon request;~~

~~(c) Comply with the disclosure requirements of Section 3 of this administrative regulation;~~

~~(d) Comply with the applicable advance directives requirements of 42 USC 1396a(w) with regard to the right to accept or reject lifesaving medical procedures as described in KRS 311.621, et seq;~~

~~(e) Accept payment from Medicaid as payment in full for all care, services, and supplies billed under Medicaid, except with regard to copayments and recipient liability (if any);~~

~~(f) Submit claims for payment only for care, services, and supplies actually furnished to eligible recipients and medically necessary or otherwise authorized by law;~~

~~(g) Provide true, accurate, and complete information in relation to any claim for payment;~~

~~(h) Permit review or audit by representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney or any other body with investigative authority over Medicaid, of all books or records or, in the discretion of the auditing agency, a sample thereof, relating to services furnished and payments received under Medicaid, including recipient histories, case files, and recipient specific data. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage.~~

~~(i) Not engage in any activity which would constitute unacceptable practice;~~

~~(j) Comply with all terms and provisions contained in the provider agreement; and~~

~~(k) Comply with all applicable federal and state statutes and~~

~~regulations relating to their provider type and provision of services under the Medicaid Program.~~

~~(7) Denial of an application for participation.~~

~~(a) Reasons for denial of application for participation may include the following factors:~~

~~1. Any false representation, omission, or failure to disclose of any material fact in making an application;~~

~~2. Any suspension, exclusion, or involuntary withdrawal from participation currently in effect in any governmental medical insurance program as a result of fraud or abuse of that program;~~

~~3. Any false representation or omission relating to the application for any license, permit, certificate, or registration related to a health care profession or business;~~

~~4. Any previous failure to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from the department or a state or federal licensing, certifying, or auditing agency;~~

~~5. A current investigation, indictment or conviction for fraud and abuse or unacceptable practice in Medicaid of this or any other state, Medicare, or any other publicly funded health care program;~~

~~6. Failure to comply with any Medicaid policy as specified in Kentucky statutes or administrative regulations of the department; or~~

~~7. Failure to pay any outstanding debt owed to the department.~~

~~(b) If an application is denied, the applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed under Sections 9 and 10 of this administrative regulation.~~

~~(c) Notice of denial of enrollment. A written notice of the denial mailed to the applicant's last known address shall be given which contains:~~

~~1. The reason for the denial; and~~

~~2. The date the applicant may make a new submission for enrollment.~~

~~(d) The denial shall be effective upon the date of the written notice.~~

~~(8) A provider of medical services or supplies may enroll for a time limited period of thirty (30) days in an exceptional situation for emergency services provided to an eligible recipient upon request by the provider and approval by the department.~~

~~Section 3. Required Provider Disclosure. (1) Providers and the fiscal agent shall comply with the disclosure of information requirements contained in 42 CFR 455 Subpart B and KRS 205.8477.~~

~~(2) Time and manner of disclosure.~~

~~(a) The required provider information specified in 42 CFR 455, Subpart B shall be provided:~~

~~1. Upon application for enrollment;~~

~~2. Annually thereafter; and~~

~~3. Within thirty five (35) days of the request by the department or the Secretary, United States Department of Health and Human Services.~~

~~(b) The disclosure requirement may coincide with the certification or recertification period except when the provider is certified other than on an annual basis.~~

~~(3) If the provider or fiscal agent fails to disclose required information within the time period specified, the provider shall be terminated from participation in the Medicaid Program on the day following the last day for submittal of the required information in accordance with Section 10(3) of this administrative regulation.~~

~~(4) The provider shall file an amended, signed ownership and disclosure form with the department within thirty five (35) days if there is a change:~~

~~(a) In ownership or control;~~

~~(b) Of a managing employee or management company;~~

~~(c) In a provider's federal tax identification number.~~

~~(5) Failure to comply with the requirements may result in termination from the Medicaid Program.~~

~~Section 4. Required Provider Documentation. (1) Each provider shall maintain documentation of:~~

~~(a) Care, services, or supplies provided to an eligible recipient;~~

~~(b) The recipient's medical record (or other provider file, as appropriate) which shall demonstrate that the care, services, or supplies billed for, were actually performed or delivered;~~

~~(c) The diagnostic condition necessitating the service performed or supplies provided; and~~

~~(d) Medical necessity as substantiated by appropriate documentation (need for procedure as indicated by appropriate medical order).~~

~~(2) A cost based provider shall maintain all fiscal and statistical records and reports which are used for the purpose of establishing rates of payment made in accordance with Medicaid policy, and all underlying books, records, documentation and reports which formed the basis for the fiscal and statistical records and reports.~~

~~(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:~~

~~(a) The date of final payment for services;~~

~~(b) The date of final cost settlement for cost reports; or~~

~~(c) The date of final resolution of disputes (if any).~~

~~(4) If any litigation, claim, negotiation, audit, investigation, or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until the latter of:~~

~~(a) The completion of the action and resolution of all issues which arise from it; or~~

~~(b) The end of the regular five (5) year period.~~

~~Section 5. Claims Processing. (1) Claim submittal.~~

~~(a) A provider shall submit a claim, using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the provision of service.~~

~~(b) A claim may be submitted on:~~

~~1. A paper form;~~

~~2. An electronic billing process; or~~

~~3. Any form approved by the department.~~

~~(c) A provider shall submit additional clarifying documentation for claims processing when required by the department.~~

~~(d) By submitting a claim a provider shall be:~~

~~1. Liable for the accuracy of all claims submitted by the provider, on the provider's behalf or by employees of the provider; and~~

~~2. Responsible for reviewing the statement of payment or remittance statement to assure that paid claims shown are true and correct, and for informing the department of any discrepancy.~~

~~(e) If a provider submits a claim electronically, the provider's acceptance of payment shall be considered to be the provider's certification that a paid claim is true and correct; and~~

~~(f) Any submittal of a false claim, statement, or document shall be considered an unacceptable practice.~~

~~(2) Claim payment.~~

~~(a) Payment shall be made by the department if:~~

~~1. The information required to pay the claim is complete;~~

~~2. The claim is not under review for medical necessity;~~

~~3. The provider has submitted all reports and information required by the department; and~~

~~4. The department is not withholding the provider's payments in accordance with Section 8 of this administrative regulation.~~

~~(b) The department may audit paid claims to determine if any unacceptable practices have occurred which may result in sanctions.~~]

Section 2. [~~6.~~] Methods for Recoupment of Overpayments Made by the Medicaid Program. (1) [~~Medicaid overpayments.~~] If a determination is made by the department that a provider was overpaid, a demand letter shall be sent to the provider setting [~~which shall set~~] forth the amount of the overpayment, the period of time involved, and the basis for determining the overpayment exists.

(2) [(a) In response to the demand letter,] The provider shall within:

(a) Sixty (60) calendar days from the date of the demand letter[: 1.] pay the amount of overpayment in full; or

b. Thirty (30) calendar days from the date of the demand letter [2.] submit a written request for a payment plan.

(3) [(b)] If the [payment] amount of overpayment resulted from rate revisions and subsequent recalculations [due a provider are recalculated] within the Medicaid Management Information System [due to rate revisions], the department shall apply the rate adjustment against the next payment cycle for the provider prior to notifying the provider of the amount of the overpayment. A provider shall be notified at least sixty (60) calendar days in advance of any payment recalculation resulting from a reimbursement rate revision.

(4) [(2)] A payment plan may be approved by the department, if a provider documents that payment in full would create an undue hardship. A written declaration [in writing to the department] of undue hardship shall include the following:

(a) Copies of financial statements which indicate payment in full within sixty (60) calendar days would create an undue hardship; and

(b) Copies of notarized letters from at least two (2) financial institutions indicating the provider's loan request was denied for the overpayment amount.

(5) [(3)] Payment plans shall not extend beyond a six (6) month period, except as provided for in subsection (6) [(4)] of this section.

(6) A payment plan approved, in writing, by the Commissioner of the Department for Medicaid with the concurrence of the secretary of the cabinet, in accordance with subsection (4) of this section, may be approved [(4) The department may approve a payment plan] in excess of six (6) months, [but not to exceed twenty-one (21) months] if the monthly repayment exceeds twenty-five (25) percent of the provider's average monthly Medicaid payment[. The average monthly Medicaid payment is] based on the previous twelve (12) month period. [month's payments.]

(7) [(5)] All payment plans shall include provisions for payments of both principal and interest as provided in KRS Chapter 360. The assessment of interest shall be at the discretion of the department.

(8) [(6)] If a provider fails to make a payment as specified in the payment plan or takes no action toward repayment, the department shall recoup the amount due from future payments. If a provider has insufficient funds available for recoupment through the payment system in the first payment cycle following the due date, payments shall continue to be recouped and the department may refer the account [referred to the cabinet's Office of the Counsel] for collection.

(9) [(7)] If a provider disputes the amount of overpayment [due the department], the provider may submit additional information, request a resolution in accordance with Section 8 [12] of this administrative regulation, and request an administrative hearing in accordance with Section 9 [13] of this administrative regulation. A cost-based provider who disputes the amount of overpayment due to the department, except for circumstances described in Section 4 of this administrative regulation shall follow the administrative process for appeals as outlined in Section 10 of this administrative regulation. Disputing the amount of overpayment shall not relieve the provider of his obligation to submit full payment [in sixty (60) days,] or to request a payment plan in accordance with subsection (2) of this section. [, within sixty (60) days of the demand letter.]

(a) If the department determines that no adjustments are required as a result of the resolution process, the initial determination shall stand.

(b) If the department determines [it is determined] that the amount of overpayment demand [requested] should be reduced, any refund [plus applicable interest as provided for in KRS Chapter 360] due to the provider shall be refunded to him [the provider] within thirty (30) calendar days from the date of the final determination letter [sent to the provider].

(c) If it is determined that the amount requested should be increased, the additional amount of overpayment due shall be subject to subsection (1) of this section.

(10) [(8)] Withholding Medicare payments to recover Medicaid overpayments.

(a) The department [cabinet] may request that the Health Care Financing Administration (HCFA) withhold future Medicare payments to a provider in order to recover Medicaid overpayments to that [the] provider. The requests for withholding shall be accomplished in accordance with the terms and conditions specified in 42 USC 1395vv.

(b) Amounts withheld [by HCFA] and forwarded [returned] to the department [cabinet] by HCFA [(as provided in 42 USC 1395vv)] which are ultimately determined by the department [cabinet] to be in excess of overpayments due to the Medicaid Program shall be returned to the provider.

(11) [(9)] Statutory recovery. The department [cabinet] shall not issue payments otherwise due to a provider, if the department has been notified [withholding is ordered] by a state or federal government agency or by a court that a court order exists requiring the department to withhold payments. [for recovery of money.] The payments shall be withheld in accordance with the provisions of the order [issued by the state or federal government agency or the court].

(12) [(10)] Medicare overpayments. If ordered to do so by HCFA, the department shall recoup the federal share of Medicaid payments [otherwise due Medicaid providers] as a means to recover Medicare overpayments. The federal share of Medicaid payments is that portion of the payment funded with federal funds.

(13) [(11)] Any contract for the sale or change of ownership of a provider participating in the Medicaid Program shall specify whether the buyer or seller is responsible for any amounts owed to the department by the provider, regardless of whether the amounts have been identified at the time of the sale.

Section 3. [7.] Administrative Process for Detection of Unacceptable Practices. (1) A preliminary investigation of alleged unacceptable practice shall be conducted by the department or its agent, if:

(a) A complaint is received by or referred from:

1. The department;

2. The [or other] cabinet; [staff] or

3. [upon referral from] The Office of Attorney General [to the cabinet]; or

(b) Questionable or unacceptable practices are identified by the department [or its contractors].

(2) If the findings of a preliminary investigation indicate that an incident of fraud or abuse involving substantial allegations or other indication of fraud may have occurred under the Medicaid Program, a referral for a full investigation shall be made to the MFACU or the Office of the United States Attorney, if appropriate.

(3) In order to facilitate a full investigation, the department shall, at the request of the MFACU or the Office of the United States Attorney, provide access to, and free copies of, any records, data, or information kept by the department, its contractors, or providers, if authorized, as specified in 907 KAR 1:672, Section 4 [of this administrative regulation].

(4) A full investigation shall continue until:

(a) Appropriate legal action is initiated;

(b) The investigation is discontinued because of insufficient evidence to support the allegation of unacceptable practice; or

(c) The case is returned to the department for administrative action.

(5) At any time during a preliminary or full investigation, the department may make an administrative determination that a provider has committed an act of unacceptable practice based on receipt of reliable evidence. The [Commissioner of the] department [for Medicaid Services] shall issue a written notice of a determination of unacceptable practice to the provider upon which an exclusion or

sanctions are intended to be imposed, as specified in Section 9 of this administrative regulation. The notice shall be mailed to the provider's designated payment or correspondence address or last known address and shall clearly state:

(a) The determination made;

(b) The basis and specific reasons for the determination;

(c) The effect of any action to be taken;

(d) The amount of [~~any~~] overpayment or penalty, if any;

(e) The effective date of the action; and

(f) The hearing rights of the provider as outlined in Section 9 [~~13~~] of this administrative regulation.

(6) At any time during a preliminary or full investigation, the department [~~cabinet~~] may refer the case to the United States Attorney's Office for appropriate [~~all~~] action [~~deemed appropriate~~].

(7) The Medicaid Program may, as it deems necessary and reasonable, use random or other statistical sampling methodologies and extrapolate the Medicaid Program's findings based on the sample.

Section 4. [~~8.~~] Withholding of Payments During Investigation of Fraud or Willful Misrepresentation. (1) The department may withhold Medicaid payments as provided for in 42 CFR 455.23 upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud or willful misrepresentation under the Medicaid Program.

(2) The department may withhold payments without first notifying the provider of its intention to withhold payments.

(3) The department shall mail written notice to the provider at the provider's last known address of its withholding of program payments within five (5) calendar days of the date upon which withholding began.

(a) The notice shall set forth the general allegations of the nature of the withholding action, including the types of payments and payment code sections to which fraud or willful misrepresentation is alleged to have occurred. The notice may [~~, but need~~] not disclose any specific information concerning its ongoing investigation.

(b) The notice shall advise the provider:

1. That payments are being withheld in accordance with this administrative regulation;

2. The statutory and regulatory basis for withholding and the facts upon which the action is taken;

3. The date upon which withholding began;

4. That withholding shall be for a temporary period;

5. [~~Of~~] The circumstances under which withholding shall be discontinued;

6. [~~Of~~] The type of Medicaid claim, as appropriate, to which withholding shall apply;

7. [~~Of~~] The provider's right to submit written evidence for consideration by the department [~~agency~~]; and

8. [~~Of~~] The provider's hearing rights in accordance with Section 9 [~~13~~] of this administrative regulation.

9. For [~~cost based~~] providers who are reimbursed using a cost-based method, payments withheld pursuant to this section shall be in proportion to the type of claim set forth under this administrative regulation to which withholding shall apply.

(4) Any withholding of payment action under this section shall be temporary and shall not continue after:

(a) The investigation has been discontinued due to insufficient evidence of fraud or willful misrepresentation by the provider;

(b) Legal proceedings related to the provider's alleged unacceptable practice are completed and all related issues have been resolved; or

(c) The matter is resolved between the department and the provider through an administrative determination of unacceptable practice, as specified in Section 3 [~~7~~] of this administrative regulation.

(5) Upon completion of the process described in subsection (4)(a) and (b) of this section all moneys [~~monies~~] due on verified claims shall be promptly disbursed to the provider.

Section 5. [~~9.~~] Sanctions. (1) The department [~~cabinet~~] shall comply with the requirements of 42 CFR 1002.

(2) The department [~~cabinet~~] shall impose sanctions as provided in KRS 205.8467[~~, as provided in this section~~] and [~~in~~] Sections 3, 4, 5, and 6 [~~7, 8, and 10~~] of this administrative regulation.

(3) The department may hold, during its administrative determination of unacceptable practice, a provider responsible and liable for the conduct and actions of its affiliates, representatives, employees, or subcontractors [~~in the administrative determination of unacceptable practice~~]. However, conduct may only be imputed to another if the conduct was accomplished within the course of the duties of the provider to be sanctioned; and

(a) The provider knew or reasonably should have known of the conduct; or

(b) The conduct was effected with the knowledge and consent of the provider.

(4) If the department sanctions a provider, it may also sanction any affiliate of the provider. However, the determination to sanction the affiliate shall be made during the process leading to the administrative determination of unacceptable practice, on a case-by-case basis, after full review and consideration of all relevant facts and circumstances leading to the sanction of the [~~primary~~] provider. The affiliate shall have the same notification and due process rights as any [~~sanctioned~~] provider.

(5) The sanction process may include the termination of the provider from the Medicaid Program; if a termination is made the termination notice shall specify the [~~a~~] period of exclusion. In determining the sanction, or the duration of exclusion, the department shall consider as appropriate:

(a) The number and nature of the unacceptable practice incidents;

(b) The nature and extent of any adverse impact the violations had on recipients;

(c) The amount of damages to the Medicaid Program;

(d) Other facts related to the nature and seriousness of the unacceptable practice; and

(e) The previous record of violations by the provider under Medicare, Medicaid and any program administered by the cabinet.

(6) The sanction process shall include liability for civil payments, restitution of overpayments and agency costs as specified in KRS 205.8467.

(7) The department [~~cabinet~~] shall use a lien, as specified in KRS 205.8471 to assure payment of restitution and monetary penalties imposed under the administrative determination of fraud.

(8) A provider excluded from the Medicare Program shall be excluded from the Medicaid Program for the same period of time.

(9) The provider shall be notified in writing by the department of any sanctions that are imposed.

Section 6. [~~10.~~] Provider Participation Termination. (1) Except as provided in subsection (6) of this section, a provider's participation may be terminated by either the provider or the department upon thirty (30) calendar days written notice to the other without cause or as otherwise specified in the provider agreement.

(2) Except as provided in subsection (6) of this section, a provider's participation may be terminated and a period of exclusion imposed, if an administrative determination is made, as set forth in Section 3 [~~7~~] of this administrative regulation, that the provider engaged in an unacceptable practice.

(3) Except as provided [~~for~~] in subsection (6) of this section and as provided for in 907 KAR 1:672, failure to maintain up-to-date information, or to submit the information within thirty-five (35) calendar days of a request by the department, [~~(except as provided for in Section 2 of this administrative regulation)~~] shall result in termination of the provider's participation in the Medicaid Program.

(4) Except as provided in subsection (6) of this section, a

provider's participation shall be terminated immediately, if it is determined [~~found~~] that the information provided at the time of application was incorrect, inaccurate or incomplete and where provision of correct, accurate and complete information would have resulted in the denial of the application based upon one (1) or more of the factors set forth in 907 KAR 1:672 [~~Section 2 of this administrative regulation~~].

(5) Except as provided in subsection (6) of this section, a provider's participation shall be terminated, if the provider fails or refuses to pay or enter into an agreement to pay the amount of any penalty imposed, including interest, in accordance with Section 5 [~~9~~] of this administrative regulation and KRS 205.8467 within sixty (60) calendar days from the date of the department's notice or the date of a hearing decision, [~~(~~]if any[~~)~~].

(6) Before the participation of a nursing facility, as defined in 42 USC 1396r(a), or an intermediate care facility for the mentally retarded, as defined in 42 USC 1396d(d), is terminated, it shall have the right to receive a hearing in accordance with Section 9 [~~13~~] of this administrative regulation and 42 CFR 431.151 through 431.154.

(7) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated, if the provider fails to submit a completed and signed application within thirty-five (35) calendar days from the date of the notice to provide the application.

(8) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated and a period of exclusion imposed upon a Medicare or Medicaid related conviction through the judicial process.

(9) A provider's participation in Medicaid shall be terminated in accordance with 42 CFR 1003.105 on the date of termination or suspension from Medicare.

(10) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated as of the date of any termination, revocation, or suspension of any registration, certification or license to practice a medical profession, or as required to provide medical care, services or supplies under Medicaid.

(11) Except as provided in subsection (6) of this section, a provider's participation:

(a) Shall be terminated and a new application required, if the ownership or controlling interest of the provider has substantially changed since the acceptance of its enrollment application, due to one (1) or both of the following actions:

1. The addition or elimination of one (1) or more partners of [~~in~~] a provider organized as a partnership; or

2. The sale of the business or assets directly related to the provision of health care, provided the [~~under the Medicaid Program if such~~] sale [~~will~~] results in a change of ownership or control of any provider;

(b) May be terminated and a new application required, if the ownership or controlling interest of the provider has substantially changed since the acceptance of its enrollment application, due to the sale or exchange of capital stock of [~~in~~] a provider organized as a corporation; and

(12) [~~(c)~~] A notice advising a provider of the termination and of the requirements to make a new application for enrollment shall be sent to the provider thirty (30) calendar days prior to its termination from the program.

(13) [~~(12)~~] Notice of termination.

(a) A notice of termination shall be in writing, mailed to the provider's last known address, and contain the following information:

1. The reason for the termination, if any;

2. The effective date of the termination;

3. The date the provider may submit an application for re-enrollment, if appropriate; and

4. The provider's hearing rights in accordance with Sections 8 and 9 [~~12 and 13~~] of this administrative regulation.

(b) If notice has been provided in accordance with Section 3 [~~7~~](5) of this administrative regulation, no additional notice of termination shall be required.

(14) [~~(13)~~] The department may extend participation or waive termination for any provider of covered medical service, if necessary to assure that adequate medical services will be available in the area served by the provider.

(15) [~~(14)~~] The department may terminate a provider immediately, if necessary to protect the health or well-being of Medicaid recipients.

Section 7. [~~11.~~] Provider Reinstatement or Re-enrollment Following Termination. (1) A provider whose participation has been terminated under the provisions of this administrative regulation may request reinstatement in accordance with the terms [~~provisions~~] set forth in the department's written notice [~~from the department~~] and shall be subject to the enrollment requirements in accordance with 907 KAR 1:672 [~~Section 2 of this administrative regulation~~]. An application for enrollment under this section shall be identified by the provider as a reinstatement application.

(2) The department may only grant reinstatement from an exclusion based on a program violation, if the provider can demonstrate and assure the department that the violation which led to the sanction is corrected and shall not be repeated.

(3) If the department approves the request for reinstatement after imposition of a sanction in accordance with Section 5 [~~9~~] of this administrative regulation, the department shall provide written notice to the provider and to all others who were informed of the sanction, specifying the date on which program participation may resume.

(4) A provider terminated from the Medicaid Program and excluded for a specified period of time shall be eligible for re-enrollment upon the expiration of the period of exclusion. [~~In addition,~~] Providers excluded on the basis of a conviction for a program related offense shall not be eligible for re-enrollment until the conviction is final and unappealable.

Section 8. [~~12.~~] Resolution of Provider Disputes Prior to Hearing. (1) If a provider disagrees with Medicaid determinations with regard to appealable issues as provided for in Section 9 [~~13~~] of this administrative regulation, the provider may request a resolution meeting. The request shall be in writing and made within thirty (30) calendar days of the date of notice [~~a resolution meeting~~]. Any disagreements relating to cost-based reimbursement rates, including [~~such items as~~] the rate [~~itself~~], cost reporting, recoupments, withholding, and any other matter relating to the provider's payments and rates, shall be resolved in accordance with Section 10 [~~14~~] of this administrative regulation.

(2) The provider's request for a resolution meeting [~~from the provider~~] shall clearly:

(a) Identify the disputed issue;

(b) State the [~~specified~~] basis on which [~~for believing~~] the department's decision is believed to be erroneous;

(c) Provide [~~any~~] documentation [~~(~~]or a summary supporting the provider's position[~~)~~]; and

(d) State the name, address, and telephone number of individuals who are [~~identify the provider's representative(s)~~] expected to attend the resolution meeting on the provider's behalf.

(3) The agency shall, within five (5) calendar days of receipt of the request for a resolution meeting, send a written response to the provider identifying the time and place in [~~of the meeting~~] which the meeting shall be held within thirty (30) days of receipt of the request and identifying the agency's representative(s) who are expected to attend the meeting. The meeting shall be held within thirty (30) calendar days of receipt of the request.

(4) The resolution meeting shall be conducted in an informal manner as directed by the department's representative. [~~with~~] The provider may [~~afforded the opportunity to~~] present any evidence or testimony to support his case.

(5) A provider may, within thirty (30) calendar days of the date of

the notice, submit any information which the provider wishes considered in relation to the department's [agency] determination without requesting a resolution meeting. The submission of additional documentation shall not extend the thirty (30) day time period for requesting a resolution meeting.

(6) The department may rescind, modify or take no action with regard to the disputed issue, but shall provide written notice to the provider of the department's decision within thirty (30) calendar days from the date of the resolution meeting, or from the date the information to be considered was presented to the department. The notice issued by [of] the department shall include the determination and the facts upon which it is based with reference to applicable statutes and administrative regulations.

(7) Information submitted for the purpose of informally resolving a provider dispute shall not be considered a request for an administrative hearing.

Section 9. [13.] Administrative Hearing Process. (1) The administrative hearing shall be conducted by a [an impartial] hearing officer who is knowledgeable of Medicaid policy. The hearing officer shall be appointed by the secretary of the cabinet.

(2) The administrative hearing [This] process shall be used in the following situations, except as specified in Section 10 [14] of this administrative regulation:

(a) If the provider's participation is terminated as specified in Section 6 [10](2), (3), (4), (5), (6), (7), (8), (10), (11) and (14) of this administrative regulation or if a provider alleges discrimination on the basis of age, color, creed, disability, ethnicity, gender, marital status, [race, sex, country of] national origin, race, religion, [ethnic group,] or sexual orientation [disability]; or

(b) If the agency imposes a fiscal sanction; or

(c) If the agency requires the repayment of an overpayment or restitution; or

(d) If the provider's payments are being withheld in accordance with Section 4 [8] of this administrative regulation.

(3) A written request for an administrative [a] hearing shall be received by the department within thirty (30) calendar days of the date of the department's notice of a determination or a resolution decision if a resolution meeting determination was requested. This request shall be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services [Human Resources], 275 East Main Street, 3rd Floor, [Cabinet for Human Resources Building,] Frankfort, Kentucky 40621.

(4) The department shall forward to the hearing officer an administrative record which shall include the notice of action taken, the statutory or regulatory basis for the action taken, the department's decision following the resolution process, and any documentary evidence provided by the appellant to the department.

(5) [(4)] The hearing officer shall schedule the hearing within thirty (30) calendar days of the receipt of the request from the provider and [with] the hearing shall not [to] be held [not] later than thirty (30) calendar days thereafter. [Either party may request a prehearing exchange of information and documents or a prehearing conference.] At least twenty (20) [fifteen (15)] calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their designated representatives. The notice shall inform them of:

(a) The date, time and place of the hearing. All [(with the] hearings shall [to] be held in Frankfort, Kentucky[) and the parties' right to request a postponement];

(b) The provider's right to request a continuance, including the manner and means by which a postponement may be requested and granted;

(c) The issues which are [to be] the subject of the hearing, including a citation to specific statutes and administrative regulations relating to those issues;

(d) The manner in which the hearing shall [will] be conducted;

(e) The right of each party to:

1. Be represented by legal counsel or if not a corporation may [to] represent himself;

2. [to] Testify;

3. [to] Produce witnesses;

4. [to] Present documentary evidence; [and to]

5. Examine opposing witnesses; and

6. Examine, prior to the hearing, information, including exculpatory information, evidence to be heard at the hearing, if any, in the agency's possession.

(f) The provider's right to request a prehearing conference or exchange of information and documents; and

(g) [(f)] The date of the prehearing exchange between the provider and department, if requested;

(h) The name, official title, address and telephone number of:

1. The hearing officer;

2. All parties to the hearing, including the counsel for the cabinet; and

3. The Commissioner of Medicaid.

(i) A statement that any party who fails to attend or participate at any stage of the hearing may be held in default.

(6) [(5)] Any prehearing conference shall [may] be held at least seven (7) calendar days in advance of the hearing date. Conduct of the prehearing conference shall comply with KRS 13B.070. [at which time] Each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(7) [(6)] A request for a hearing shall be considered to be abandoned, if the provider does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled. A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the provider stating that the request is withdrawn; or

(b) The provider makes a statement on the record at the hearing that he is withdrawing his [the] request for the hearing.

(8) [(7)] Documentary evidence to [which may] be used at the hearing shall be made available in accordance with the following:

(a) If copies of the documentary evidence which the provider intends [plans] to produce [use] at the hearing have not been provided to the department, the documents shall be made available for examination by the department, [an opportunity to examine the documents shall be afforded the department] upon request; and

(b) If copies of the documentary evidence which the department intends [plans] to produce [use] at the hearing have not been provided to the provider or the provider's representative(s), the documents shall be made available for examination by the provider, [an opportunity to examine the documents shall be afforded the provider] upon [his] request.

(9) Information relating to the selection of the provider for audit, investigation notes or other material which may reveal auditor investigation techniques, material prepared for submission to a law enforcement or prosecutorial agency, information concerning law enforcement investigations, or judicial proceedings or confidential sources or confidential information shall not be revealed.

(10) [(8)] The hearing officer shall preside over the hearing and shall conduct the hearing in accordance with KRS 13B.080 and 13B.090. [have all the powers conferred by law to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.]

(11) [(9)] The individuals who may be present at the hearing, include:

(a) The provider; [or]

(b) The provider's representative or counsel; [or other]

(c) Representatives of the department or state;

(d) An interpreter, if the appellant is deaf or hearing impaired or [and] an interpreter has been requested, because English is not the

first language of the provider or witness;

(e) Witnesses for both parties subject to conditions imposed by the hearing officer;

(f) [~~providers who may be called as witnesses by the hearing officer and other providers or~~] Members of the public, admitted at the discretion of [~~as~~] the hearing officer [~~in his discretion may admit~~], shall be entitled to be present at the hearing. [~~Staff of the department shall be entitled to observe or to assist the official representative of the department.~~]

(12) [~~(10)~~] The issues and documentation considered at the hearing shall be limited to issues directly relating to the [~~adverse~~] determination.

(a) [~~Formal rules of evidence shall not apply.~~

~~(b) Irrelevant and unduly repetitious testimony and cross-examination shall be excluded.~~

~~(c)~~] The department [~~cabinet~~] shall show the facts, circumstances, administrative regulations, or statutes on which the determination was based. [~~, and~~] The provider shall have [~~has~~] the burden of showing that the determination of the department was incorrect.

(b) [~~(d)~~] If the determination is based upon an alleged failure of the provider to comply with applicable generally accepted business, accounting, professional or medical practices or standards of health care, the department shall establish the existence of the practice or standard.

(c) [~~(e)~~] The department shall be responsible for notifying the hearing officer [~~of the record~~] of previous relevant violations by the provider under Medicare, Medicaid, and any program administered by the Cabinet for Health Services [~~Human Resources~~] which the department wishes the hearing officer to consider in his deliberations.

[~~(11) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.~~

~~(12) The hearing proceedings shall be recorded but not transcribed unless requested by either party. The cost of a court reporter, if utilized, and the transcription shall be the responsibility of the party making the request. If a third party requests a copy of the original transcript, the party requesting the copy shall be responsible for the cost of the copy.~~]

(13) The hearing officer shall consider the facts as presented at the hearing, [~~,~~]including supplementary material, if requested, [~~,~~] and prepare a recommendation [~~decision~~] based on the record consistent with Medicaid policy as expressed in statutes and administrative regulations.

(a) The hearing officer shall prepare a hearing report to be issued within sixty (60) calendar days of the conclusion of the hearing or the closing of the record, and sent to each of the parties or their designated representatives.

(b) The hearing report shall include:

1. Findings of fact;

2. Conclusions of law;

3. Determination of issues; and

4. The hearing officer's recommendation [~~decision~~] and reasons for the determination.

(c) The hearing officer's recommendation [~~decision~~] shall be submitted to the secretary of the cabinet and to the department. The department or provider [~~Either party~~] shall have fifteen (15) calendar [~~ten (10)~~] days within which to file with the secretary exceptions to the hearing officer's recommendation [~~decision, with the secretary~~]. The secretary shall make the final decision of the cabinet [~~agency~~] pursuant to KRS 13B.120 [~~211.090(2)~~], supported by findings of fact and conclusions of law.

(d) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(e) The department shall maintain an official record of the hearing in compliance with KRS 13B.130.

(14) The hearing officer may grant an extension of any time frames specified in this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider. Any extension of time for completion of the recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

Section 10. [~~14.~~] Administrative Hearing Process for Use in Appeals Relating to Providers Subject to Cost-based Reimbursement [~~Rates~~]. Participating providers reimbursed using a cost-based method [~~system~~] shall have the right to appeal all issues relating to their rates, cost reporting, recoupments, withholding, [~~,~~]except as described in Section 4 [~~8~~] of this administrative regulation[~~,~~], and any other matters, except termination, relating to the provider's payments and rates utilizing the process described in this section.

(1) Type of review. This section provides for a program review by the [~~Director, Division of Reimbursement Operations,~~] department [~~for Medicaid Services, or the director's designee,~~] and an administrative hearing held [~~(following the program review)~~] by an administrative hearing officer.

(2) Program review requirements and processes.

(a) Upon receipt of the department's determination with regard to rates, cost reports, withholding, recoupment, or other issues relating to payment rates a [~~the~~] provider electing to request a program review shall request the review and the department shall review the request prior to [~~have~~] thirty (30) calendar days, from date of notice by the department, [~~to request a program review~~] of the determination. The department's determination on cost reports shall include the basis for the determination. [~~The request for program review shall be received by the department within the thirty (30) day period.~~]

(b) The request for review shall be in writing and identify the following:

1. The specific aspects of the determination with which the provider is dissatisfied; and

2. The specific reason the provider believes the determination is incorrect.

(c) The request shall be accompanied by any documentary evidence [~~(or an appropriate summary)~~] which the provider considers necessary to support its position.

(d) The department may issue a decision in lieu of holding a program review meeting, based on information and documentation received from the provider. The department shall immediately notify the provider, in writing, of the decision and shall provide guidelines for requesting an administrative hearing.

(e) If a program review meeting is determined necessary, the department shall schedule the program review to be held within thirty (30) calendar days after receipt of the request from the provider.

(f) [~~(e)~~] If an audited cost report (including cost reports that have been desk reviewed) or rate of reimbursement is not appealed in accordance with paragraph (a) of this subsection and subsection (3)(a) of this section. [~~a timely manner~~] The provider's appeal rights shall terminate for that cost report or reimbursement rate and the cost report or reimbursement rate shall not be subject to reopening unless the department determines that there was suspected fraud or misrepresentation by the provider or that an error has been made by the department which should be corrected. Reopening of a cost report or rate of reimbursement for suspected fraud or misrepresentation by the provider or an error made by the department shall not extend any previous appeal limitations, except that any change made as a result of the reopening may be appealed.

(g) [~~(f)~~] A request for program review of a reimbursement rate, desk review, or audited cost report which does not specify the exact item(s) being appealed shall not be accepted.

(h) A [~~(g) The~~] program review meeting, when determined necessary by the department, shall be conducted in the following manner:

1. The program review meeting shall be conducted by the director or his designee. The proceedings shall be recorded and a tran-

scription made. If transcribed by the department, a copy shall be made available to the provider upon payment of the usual fee for copied material; if transcribed for the department by a court reporter, the provider may obtain a copy from the court reporter upon payment of the court reporter's usual fee for a copy.

2. During the program review meeting [~~hearing~~] the provider shall provide any testimony or documentation which he desires in support of the provider's contention that the department's decision should be amended or nullified. Department [~~Cabinet~~] staff who are employed under [~~within~~] the state merit system and [~~who~~] are knowledgeable of the issue, shall explain the department's position and present any evidence the staff feels will support[~~s~~] the department's position.

3. Staff employed under the state merit system who are [~~staff~~] participating in the program review [~~(or as designated by the director or his designee if necessary)~~] shall prepare and submit to the department [~~director or his designee~~] a written opinion and recommendation with findings of fact, and supporting documentation[~~, with regard to the director's or his designee's decision~~]. The department [~~director or his designee~~] shall make a decision with regard to the issue within thirty (30) calendar days of the program review meeting [~~hearing~~] either by adopting the recommendation of staff employed under the state merit system, or, if the department's [~~director's or his designee's~~] decision is different from the recommendation(s) of state merit system staff, the department [~~director or his designee~~] shall document the [~~his~~] decision and provide, for the record, justification for that decision.

(h) The department [~~director or his designee~~] may extend any of the time frames that are specified in subsection (2) of this section, except for a request that a program review be held, if determined necessary for the efficient administration of the program review process or to prevent an obvious miscarriage of justice with regard to the provider.

(3) Administrative hearing requirements and processes.

(a) Upon receipt of the program review decision of the department [~~director or his designee~~], the provider may appeal the decision [~~(and underlying program issue)~~] by mailing or delivering a request for appeal to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services [~~Human Resources~~], Third Floor, [~~CHR Building,~~] 275 East Main Street, Frankfort, Kentucky 40621 [~~within thirty (30) days of the decision~~]. The request for a hearing shall be received by the Office of the Commissioner not later than [~~within the~~] thirty (30) calendar days from the date of the program review notification. [~~period;~~] If a request for an administrative [~~a~~] hearing is not received prior to thirty (30) calendar days from the date of program review decision notice by the department of the determination [~~within the thirty (30) day period~~] the decision of the department [~~director~~] shall be final.

(b) The request shall be in writing and include [~~identify~~] the following:

1. The specific aspect(s) of the department's [~~director's~~] decision with which the provider is dissatisfied;

2. The specific reason(s) the provider believes the decision is incorrect; and

3. [~~Be accompanied by~~] The documentary evidence previously [~~before~~] introduced to the department [~~director or his designee (or an appropriate summary)~~] which the provider considers necessary to support his [~~its~~] position.

(c) The Secretary of the Cabinet for Health Services shall appoint a hearing officer who is knowledgeable of Medicaid administrative regulations and policies. The hearing officer shall schedule a hearing on the record not later than [~~within~~] thirty (30) calendar days after the [~~of~~] receipt by the department [~~cabinet~~] of the provider's request for a hearing. [~~with~~] The hearing shall not [~~to~~] be held [~~not~~] later than thirty (30) days after the receipt of the request [~~thereafter~~]. At least twenty (20) [~~fifteen (15)~~] calendar days prior to the date of the hearing, written notice shall be mailed [~~sent~~] by the hearing officer to the parties and their designated representatives. The notice shall comply with KRS 13B.050. [~~shall inform them of the date, time, and place of the hearing and of the issues which are to be the subject of the hearing.~~]

(d) The hearing officer shall restrict the scope of the hearing to the same issues considered [~~and determined~~] during the program review hearing.

(e) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. [~~following provisions shall govern the conduct of the hearing.~~

~~1. The hearing shall be conducted with the hearing officer responsible for ensuring that a complete and accurate record of the proceedings is made. The provider shall notify the hearing officer sufficiently in advance of the hearing if a transcript is desired, with the transcript provided upon payment of customary fees to the department or court reporter as appropriate.~~

~~2. The provider shall be afforded the opportunity to present any testimony and documentary evidence in support of its position, including but not limited to a written statement rebutting the program review findings and decision of the director if desired.~~

~~3. The department shall be afforded the opportunity to present any testimony and documentary evidence in support of its position, including but not limited to the transcript of the program review, opinions and recommendations of merit system staff that contributed to the director's decision, and the actual program review decision.~~

~~4. The hearing officer shall solicit, through questions to participants in the hearing or any other appropriate manner, any further information that he considers necessary for the resolution of the issue.~~

~~(f) The hearing officer shall consider the facts as presented at the hearing (including supplementary material if requested) and prepare a decision based on the record consistent with statutes and administrative regulations.~~

~~1. The hearing officer shall prepare a hearing report to be issued within sixty (60) days of the conclusion of the hearing or the closing of the record, and sent to each of the parties.~~]

(f) [~~2.~~] The hearing officer's recommendation [~~report~~] shall comply with KRS 13B.110. [~~include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.~~]

1. [~~3.~~] The hearing officer's recommendation [~~decision~~] shall be submitted to the Secretary of the Cabinet for Health Services. Either party shall have fifteen (15) calendar [~~ten (10)~~] days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 13B.120 [~~211.090(2)~~] supported by findings of fact and conclusions of law.

2. [~~4.~~] In the correspondence transmitting the decision, [~~clear~~] reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(g) Except for a request that an administrative hearing be held, the hearing officer may grant an extension of any time frames specified in subsection (3) of this section, [~~except the requirement that the request for a hearing be filed in a timely manner,~~] if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice. Any extension of time for completion of the recommended order shall comply with the requirements of KRS 13B.110(2) and (3). [~~with regard to the provider.~~]

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All providers participating in the Medicaid Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Considered budget neutral.

2. Continuing costs or savings: Considered budget neutral.

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: None

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

(8) Assessment of expected benefits:

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

(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: This regulation is being amended to comply with KRS Chapter 13B governing administrative hearings and is being divided into individual subject matter regulations to comply with KRS Chapter 13A requirements. No policy changes have been made.

(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 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.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

NEW ADMINISTRATIVE REGULATION RECEIVED THROUGH NOON, APRIL 15, 1996

OFFICE OF THE ATTORNEY GENERAL
Division of Administrative Hearings
(New Administrative Regulation)

40 KAR 5:010. Required training.

RELATES TO: KRS 13B.030
STATUTORY AUTHORITY: KRS 13B.030
NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with KRS 13B.030 which requires the division to establish by administrative regulations minimum standards concerning length of training, course content and instructor qualifications for initial training and continuing education of hearing officers. The function of this administrative regulation is to establish education requirements for hearing officers.

Section 1. Definitions. (1) "Classroom hour" means fifty (50) minutes of actual classroom instruction.

(2) "Hearing officer" means the individual, duly qualified and employed pursuant to KRS Chapter 13B, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.

Section 2. Required Hours of Instruction. A person wishing to become qualified as a hearing officer shall have completed eighteen (18) classroom hours of approved instruction.

Section 3. Approved Instruction. Approved instruction for hearing officers shall be subjects related to administrative hearings that:

(1) Include training in the conduct of administrative hearings, and shall consist of a minimum of instruction in each of the following areas:

(a) Administrative law and procedure. The course shall cover at least the history, origin, source, and limitations of agency authority to act, the role of hearing officials, the adjudicatory function as opposed to and differentiated from the regulatory and enforcement functions of the agency. The training should cover the regulatory and enforcement processes of applicable agencies.

(b) Due process. The course shall cover at least the fundamentals of constitutional due process concepts of adequate notice and a reasonable opportunity to be heard, giving some detail to the constitutional restrictions on notice and a hearing.

(c) Conduct and control of hearings. The course shall cover at least the role of prehearing conferences and discovery, opening a hearing, conduct of a hearing, order of proof, marking and handling exhibits, ruling on objections, swearing witnesses, proper demeanor, dress, formality and decorum, making the hearing accessible to disabled persons, and closing a hearing. The course shall include documentary samples.

(d) Credibility. The course shall cover judging demeanor and forthrightness of witnesses, appearance and body language, sexual, racial and cultural bias and prejudice, judging common sense of answers, consistency, context and flow.

(e) Ethics. The course shall cover at least the general principles of conflict of interest and ex parte contact and the general ethical standards to which hearing officers, judges and lawyers are held with at least an overview of the ethical code applicable to hearing officers, judges and lawyers.

(f) Case file and docket management. The course shall cover case file composition, handling, docketing and tracking principles, keeping exhibit and witness lists, motion practice, setting discovery deadlines, continuances, reviewing the record, hearing decision time limitations and extensions thereof.

(g) Evidence in administrative proceedings. The course shall cover at least an overview of competency, documentary evidence, demonstrative evidence, hearsay, privileges, the work product rule, oaths and swearing, establishing a foundation, cumulative evidence, proffered evidence, confidential evidence, official notice and handling the evidence. The course shall include instruction on the standards and burdens of proof applicable in administrative proceedings. The course shall include sample documentary and testimonial evidence.

(h) Decision writing. The course shall cover the function and purpose of the written decision, and at least the basic administrative decision format and how to differentiate between factual findings and legal conclusions, how to identify and establish jurisdiction over subject matter and parties, establish the procedural history, use an appropriate format, and some coverage of writing style, tone and organization. The course shall include written samples.

(2) Include training in the application of KRS Chapter 13B, and shall consist of a minimum of instruction in each of the following areas:

(a) Conflict of interest. The course shall cover conflicts of interest as addressed in KRS 13B.040 including who is governed by KRS 13B.040, what kind of contact is prohibited, what the statute prohibits, and the mechanics of withdrawal. The course must cover identifying who is an "investigator" or "prosecutor" who acted in the "same proceeding" or the "preadjudicative stage" of an "administrative hearing." The course must cover what actions are prohibited under KRS 13B.040, addressing "serving as" or "assisting or advising a hearing officer." The course must address the standard to be applied and the mechanics of withdrawal.

(b) Ex parte contact. The course shall cover improper ex parte contact as defined in KRS 13B.100, including the concept of "substantive" as opposed to "procedural" inquiries and what are the "merits" of an administrative action, who is prohibited from making ex parte inquiries, and under what circumstances hearing officials and assistants may talk ex parte with "parties" and other "interested persons." The course shall include specific instruction on how to handle ex parte contact, how to train support staff and the method required to document ex parte contact in the record. The course shall specifically address contacts by agency and outside counsel, contacts by the hearing officer and contacts with the agency head or other agency personnel. The course shall include case studies and written materials, including ethical opinions from the Bar, relevant case decisions, and the relevant judicial cannons and rules of professional conduct applicable to judges and attorneys.

(c) Adequate notice. The course shall cover the contents and effect of the notice of hearing required by KRS 13B.050, including at least scheduling and time limits, improper mailing, incomplete or improper notice content, and the effect of violation of KRS 13B.050 and remedies therefore.

(d) Intervention. The course shall cover intervention under KRS 13B.060 including mandatory and permissive intervention, statutory rights to intervention, the standard for permissive intervention, the procedure for petitioning to intervene, structuring the intervention, and writing the order permitting or denying intervention. The course shall include sample petitions and orders.

(e) Prehearing conferences and discovery. The course shall cover the nature, scope and purpose of a prehearing conference under KRS 13B.070, its relation to settlement, alternative dispute resolution, discovery and the hearing process. The course shall address methods of managing and scheduling prehearing conferences that will promote the orderly and prompt conduct of a hearing, including the filing of motions, prehearing memorandums, witness and exhibit lists, briefs, proposed findings and conclusions and recommended orders. The course shall also cover discovery available under KRS 13B.050,

13B.080 and 13B.090, and discovery orders and problems, as well as issuance, quashing and enforcement of subpoenas and the standards therefor. The course shall specifically address the obligation to reveal documentary or tangible evidence and exculpatory evidence in the agency's possession and the consequences of the failure to do so. The course shall include written samples of prehearing conference orders, motions and subpoenas.

(f) Hearing procedures and compiling the record. The course shall cover manners and methods of ensuring the "orderly and prompt conduct of the hearing" under KRS 13B.080 and shall specifically include material on the obligation to have testimony under oath and swearing witnesses, material on briefs, argument, testimony, marking and admission of evidence, granting defaults, and procedures and standards for rendering defaults and shall address the meaning and composition of the record under KRS 13B.130 and method of compiling the record for review, including submission in writing, and proffers of evidence.

(g) Findings and evidence. The admissibility of hearsay and standards therefor. The course shall also cover the basic evidentiary standard for all types of evidence and constitutional, statutory grounds for exclusion and privileges recognized in Kentucky law. Ruling on and memorializing objections and taking "official notice" of facts.

(h) The recommended order and writing for judicial review. The course shall cover the nature, scope and function of findings and conclusions under KRS 13B.110 and the interrelation with evidentiary rulings under KRS 13B.050, 13B.090, compilation of the record under KRS 13B.130 and the standards for judicial review under KRS 13B.150. The course shall address the obligation to base findings only upon the evidence in the record under KRS 13B.090(1), and shall cover time limits, extensions and the consequences of failure to file a recommended order within statutory time periods. The course shall include samples of written findings, conclusions and recommended orders.

(3) Include agency specific training which shall cover the specific federal and state authorizing statutes and regulations under which a particular hearing officer will be conducting hearings, and will be as approved by the agency head or the division. Except in exceptional circumstances, a hearing officer shall not be deemed qualified by the division to conduct hearings in a particular area without agency specific training.

Section 4. Course Approval. (1) In order for an education course to be approved by the division, for initial hearing officer instruction or continuing education, the sponsor of the course shall provide to the division for approval:

(a) An outline of the course in such detail that all the pertinent material to be taught is disclosed; and

(b) The work experience, credentials and educational background of the instructors of the course.

(2) To receive approval, an education course shall consist of topics that will:

(a) Enable a hearing officer to maintain or improve their skills as a hearing officer;

(b) Serve the public.

(3) An education course shall consist of a minimum of two (2) hours.

Section 5. Continuing Education. (1) Each education year, every person certified as a qualified hearing officer under KRS Chapter 13B in this Commonwealth, shall complete a minimum of six (6) credit hours in continuing education activities approved by the division. An educational year shall begin on July 1 and end on the following June 30. All continuing education activities must be completed not later than June 30 of each educational year.

(2) A member who accumulates an excess over the six (6) credit requirement may carry forward the excess credits into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those years. Carry forward is limited to a total of twelve (12) credits. All excess credits above a total of twelve (12) credits will remain on the member's records but may not be carried forward.

(3) On or before July 1 of each year, every person certified as a qualified hearing officer under KRS Chapter 13B in this Commonwealth, shall certify to the director that he or she has completed a minimum of six (6) credit hours of continuing education.

(4) Certification may be submitted to the director upon completion of the continuing education activity at any time during the educational year. Certification shall not be submitted later than the July 15th immediately following the educational year in which the activities were completed.

(5) If a hearing officer fails to comply with the provisions of this section, the division director shall notify him as soon as practicable on or after August 1 of the same year calendar year. The authority to hear administrative actions under KRS Chapter 13B shall be suspended until such time as the continuing education requirements are met.

JEFFREY F. LAGREW, Director

APPROVED BY AGENCY: April 15, 1996

FILED WITH LRC: April 15, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. at 1024 Capital Center Drive, Conference Room A, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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 will 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 hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation to: Office of the Attorney General, Jeffrey F. Lagrew, Director, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-5944.

REGULATORY IMPACT ANALYSIS

Contact Person: Jeffrey F. Lagrew, Director

(1) Type and number of entities affected: All administrative agencies in the executive branch of state government not specifically exempt. Approximately 44 boards and agencies are affected.

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

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

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

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

1. First year following implementation: Hearing officers will be required to provide proof of prior training or complete 18 hours of education, estimated cost of $250 per hearing officer not previously trained. This cost would fall on the hearing officer if not a state employee. Minimal paperwork requirements.

2. Second and subsequent years: Hearing officers will be required to attend 6 hours of continuing education, estimated to cost less than $100. Minimal paperwork requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of approving training and certifying completion of training. Estimated at approximately 30 minutes per hearing officer.

Assuming approximately 100 hearing officers, 50 man-hours would be committed. Estimated cost $5,000.

2. Continuing costs or savings: Should remain the same at approximately $5,000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Each hearing officer will be required to show evidence of having completed the required training and continuing education on an annual basis. The division will be required to maintain records of this training and issue certification of compliance.

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

(5) Source of revenue to be used for implementation and enforcement of regulation: Funds appropriated by the general assembly, currently in budget.

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

(a) Geographical area in which administrative regulation will be implemented: No impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is to not have minimal training requirements for hearing officers. This was rejected as it did not provide for the assurance of a minimal level of competence of hearing officers.

(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 impact.

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

(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) Any additional information or comments: The only cost associated with this regulation are training cost to the hearing officers. Any contract hearing officer would bear this cost personally. Those boards and agencies using hearing officers provided by the Attorney General would have no cost as they are already trained. Therefore, no board or agency should have any cost unless the actual members chose to be trained themselves.

(11) TIERING: Is tiering applied? No, Tiering was not used as the statute requires uniformity in education requirements of hearing officers.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 22:120. 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: April 12, 1996

FILED WITH LRC: April 15, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1996, at 10 a.m., in the offices of the Finance and Administration Cabinet, Room 386, Capitol Annex, Frankfort, Kentucky 40601. Persons interested in attending this hearing shall notify the agency representative designated below no later than five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: 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 Secretary of the Finance and Administration Cabinet. Once the employment manuals are promulgated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

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

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

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

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

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

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

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

GENERAL GOVERNMENT CABINET
Board of Accountancy
(New Administrative Regulation)

201 KAR 1:160. Quality reviews.

RELATES TO: KRS 325.301(6)

STATUTORY AUTHORITY: KRS 325.301(6)

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures that a CPA firm must follow to obtain a quality review.

Section 1. Definitions. "Sponsoring organization" means an entity operating a quality review program whose standards of review are equivalent to or better than the "Standards for Performing and Reporting on Peer Reviews" published by the American Institute of Certified Public Accountants, effective April 3, 1995. This document is incorporated by reference and may be inspected, copied or obtained from the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Section 2. (1) Beginning with the effective date of this administrative regulation the board shall review its records of the quality enhancement program to determine if all the practice units in the program that perform audits have submitted proof that they are currently enrolled in a quality review program operated by a sponsoring organization for the period covered by that unit's most recent filing with the quality enhancement program. If no proof has been submitted, a letter shall be issued to the practice unit advising them that they shall enroll in a quality review program operated by a sponsoring organization within forty-five (45) days of the date of the letter.

(2) Within eighteen (18) months of the date of enrollment in an acceptable quality review program, the practice unit shall submit to the board:

(a) A letter from the sponsoring organization indicating satisfactory completion of a quality review; or

(b) Submit the quality review report.

(3) All sponsoring organizations shall report to the board on a semiannual basis the names of all firms enrolled in the quality review program. The sponsoring organization shall bear all costs of verifying compliance with the standards for performing quality reviews.

Section 3. Any firm that agrees to perform an audit and is not enrolled in an acceptable quality review program at the time of entering into such an agreement, shall enroll in a quality review program before beginning work on the audit.

ASA L. HORD, CPA, President

APPROVED BY AGENCY: April 5, 1996

FILED WITH LRC: April 8, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 1996, five

days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, (502) 595-3037.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected:

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(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: This regulation may reduce the number of small firms performing only one audit per year. The effect may be even smaller than anticipated, since some small firms perform one or a few small governmental audits. Under national government auditing standards, these firms are presently required to undergo a quality review process.

1. First year following implementation: 30 CPA firms a year will be required to undergo this review. It is anticipated that the cost per firm will be as follows: Administrative fees: Sole proprietors - $550; firms with 2-10 professionals - $700; firms with over 10 professionals - $950. Reviewing firm charges: estimated minimum - $1360; estimated maximum is $3400. (Based upon estimated completion time within range of 16-40 hours at estimated reviewer rate of $85.00). Cost per firm = administrative fee and review firm charge. Most CPA firms voluntarily undergo this review every three (3) years. It is anticipated that the firms affected by this regulation are mostly sole proprietorships or small firms and the actual review charges will be well under the maximum estimate shown above.

2. Second and subsequent years: This cost would occur every three (3) years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Administrative cost consists of staff time. This would be handled by existing staff.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs: Mandatory peer review would decrease the number of firms reviewed in QEP; thus overall workload reduction long term.

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds for Kentucky State Board of Accountancy.

(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, this is not area specific.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only one specified by statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See (a) above.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This does not conflict with any other statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied. Many public accounting firms do not report on audited financial statements. It was believed that firms choosing to perform this highest level of attestation should undergo a peer review process. A majority of firms performing audits voluntarily undergo this review.

JUSTICE CABINET
Juvenile Detention Facilities
(New Administrative Regulation)

500 KAR 6:190. Waiver of compliance.

RELATES TO: KRS 15A.210

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

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 shall 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.

E. DANIEL CHERRY, Secretary
APPROVED BY AGENCY: April 12, 1996
FILED WITH LRC: April 15, 1996 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 22, 1996 at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs
(1) Type and number of entities affected: 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
(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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of District Support Services
(New Administrative Regulation)

702 KAR 3:041. Repeal of 702 KAR 3:040, Check issuing policy.

RELATES TO: KRS 160.560
STATUTORY AUTHORITY: KRS 156.070, 160.560
NECESSITY AND FUNCTION: The requirement for a check issuing policy is mandated in KRS 160.560, making 702 KAR 3:040 unnecessary. This repeal will make annual approval of a local school board's check issuing policy by the Kentucky Board of Education unnecessary.

Section 1. 702 KAR 3:040, Check issuing policy, 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: April 4, 1996
FILED WITH LRC: April 5, 1996 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 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 May 26, 1996, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director
(1) Type and number of entities affected: 176 school districts.
(2) Direct and indirect costs or savings to those affected: None
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: None
2. Second and subsequent years: None
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(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.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(New Administrative Regulation)

907 KAR 1:560. Medicaid hearings and appeals for recipients.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS Chapter 13B, 194.025, 194.050, 205.231, 205.237, 42 CFR 431 Subpart E, 42 USC 1396, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places 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 provisions relating to the Medicaid hearings and appeals process for recipients.

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(3) "Department" means the Department for Medicaid Services.

(4) "Designated hearing agency" means the Department for Social Insurance.

(5) "Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.

(6) "Recipient" means an individual who receives Medicaid.

Section 2. Informing the Applicant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing, orally and in writing when application is made; and in writing when any action is taken affecting his eligibility in accordance with KRS 13B.050.

(2) Each applicant or recipient shall be informed of the method by which he may obtain a hearing and that he may be represented by legal counsel, a relative, a friend, other spokesperson or himself.

Section 3. Request for a Hearing. (1) Any applicant or recipient or an authorized representative may request a hearing by filing a request with the designated hearing agency at either the local office or central office.

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement in written form or orally and later followed up in writing.

Section 4. Time Limitation for Request. (1) To be considered timely, a written or oral request from an applicant or recipient shall be received by the designated hearing agency within:

(a) Forty (40) days of the date of the advance notice of adverse action; or

(b) Thirty (30) days of the notice of:

1. Denial of an application;
2. Discontinuance of an active case;
3. Increase in patient liability;
4. Reduction of Medicaid coverage; or
5. If the hearing issue is delayed in action, the time period the action is pending.

(2) An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of adverse action or the notice of discontinuance, increase in patient liability or reduction of Medicaid coverage.

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of adverse action or the notice of discontinuance, increase in patient liability or reduction of Medicaid coverage;

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Medicaid shall be continued through the month in which the hearing officer's decision is rendered if the request results from dissatisfaction regarding a proposed discontinuance, proposed increase in patient liability or proposed reduction of Medicaid coverage and is received within ten (10) days of the date of the advance notice of adverse action or notice of decrease or discontinuance.

(2) Medicaid shall be reinstated and continued through the month in which the hearing officer's decision is rendered if the request is received within twenty (20) days of the date of the advance notice of adverse action or notice of discontinuance, increase in patient liability or reduction of Medicaid coverage and the reason for delay meets the good cause criteria contained in Section 4 of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant or recipient requests the discontinuance, increase in patient liability or reduction of Medicaid coverage to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law, administrative regulation, or policy of the department.

(5) Continued or reinstated benefits shall be considered overpayments if the agency decision is upheld.

(6) Time limited benefits shall not be extended based on a

request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency. The acknowledgement letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing, the right to representation and, a statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community. Subsequent notification shall comply with the requirements of KRS 13B.050.

(2) All parties to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case. Less timely notice may be requested by the applicant or recipient to expedite the scheduling of the hearing.

(3) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision, with the exception that any hearing determination regarding a community spouse income or resource allowance shall be held within thirty (30) days of the hearing request date.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but he shall be granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action.

(2) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing. A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with good cause criteria contained in Section 4 of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including: his right to legal counsel or other representation, the right to review the case record relating to the issue, and the right to submit additional information in support of his claim.

(2) If the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at the department's expense if the hearing officer considers it necessary. If a medical assessment at the department's expense is requested by the applicant or recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant or recipient may request and shall be entitled to a postponement of a hearing if the request is made before the hearing and, the request is for an essential reason beyond the control of the applicant or recipient in accordance with good cause criteria contained in Section 4 of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer. The postponement of the hearing shall not exceed thirty (30) days from the date of the request. The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. If after a review of the case record but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken by the agency is incorrect, he shall authorize corrective action in the form of eligibility or coverage to which the applicant or recipient would have been entitled or to continuing eligibility or coverage if the issue was a proposed action, but for the incorrect decision of the agency. The applicant or recipient shall then be given the opportunity to withdraw the hearing request, but the hearing shall be scheduled if the applicant or recipient wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090. The hearing officer shall be impartial and shall disqualify himself for any reason set forth in KRS 13B.040. The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not met.

(2) The hearing shall be conducted in-state where the applicant or recipient may attend without undue inconvenience.

(3) If necessary to receive full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(4) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary.

(a) Parties to a telephonic hearing who wish to introduce documents or written materials not yet supplied to opposing parties into the record at the hearing shall immediately mail copies of the documents to the hearing officer and to the opposing party.

(b) All parties to a telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the convening of the hearing.

(c) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraphs (b) and (c) of this subsection may result in its being excluded from the record.

Section 12. The Decision. (1) After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and conclusions of law, specifying the reasons for the decision and identifying the supporting evidence and administrative regulations. The hearing officer's decision shall state the issues, contain a finding of facts, present the hearing officer's conclusion(s) of law, state the decision with regard to the issues, and contain a statement explaining the appellant's further hearing rights.

(2) Decisions with regard to a community spouse's income allowance shall be subject to downward adjustments as deemed necessary by the agency as circumstances causing financial duress change or no longer exist. The resource allowance shall be subject to this adjustment only with regard to resources attributed to the community spouse but not transferred in the six (6) months. This adjustment is appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issues considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 13. Appeal from Decision of Hearing Officer for Applicants and Recipients. Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appointed appeal board.

(1) The appeal request shall be considered timely, when it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the hearing officer's decision was mailed.

(2) If the good cause criteria in Section 4 of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely. The request shall be filed in writing or orally, but if filed orally shall be followed up in writing, it shall be considered filed on the day the oral or written request is received.

(3) Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the hearing officer.

Section 14. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. All appeals shall be acknowledged in writing to the applicant or recipient and his authorized representative. The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, the parties may present written arguments and at the appeal board's discretion, be allowed to present oral arguments.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to introduction of additional evidence or to rebut or refute any additional evidence.

Section 16. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the appeal board, shall set forth in writing the facts on which the decision is based and unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150, shall be irrevocable in respect to the issues in the individual case.

Section 17. Medicaid Case Actions Following a Decision. (1) Medicaid case actions following a decision of a hearing officer or the appeal board shall be made promptly and shall include the month of application or, providing it is established that the applicant or recipient was eligible during an entire period, the month in which incorrect action of the department adversely affected the applicant or recipient.

(2) For reversals involving reduction of Medicaid coverage or an increase in patient liability, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing or appeal board decision.

Section 18. Special Procedures Relating to Nursing Facility, Hospital and Psychiatric Residential Treatment Facility Level of Care Determinations. The department contracts with peer review organizations to provide level of care determinations for those individuals in nursing facilities. For those individuals appealing a peer review organization's determination, the following special provisions shall be applicable:

(1) If the peer review organization's decision is adverse to the recipient, a written notice of the decision shall be given to the recipient, the physician of record, the facility (if any) and the department. The notice shall comply with the requirements of Section 2 of this administrative regulation.

(2) The recipient may appeal the determination of the peer review organization by filing a written request for reconsideration with the utilization review agency. The request for reconsideration shall be made within thirty (30) days of the date on the notice of the adverse decision. If the request for reconsideration is made within ten (10) days, benefits shall continue (as appropriate) until the reconsideration decision has been made. Reconsideration hearings shall be held within ten (10) working days of the request when the recipient is in the facility; if the request for reconsideration is received after the recipient has left the facility, the hearing shall be held within thirty (30) days.

(3) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090. He shall be impartial and shall disqualify himself for any reason set forth in KRS 13B.040.

(4) After the hearing is concluded, the hearing officer shall set forth in writing his findings of facts and conclusion of law specifying the reasons for the decision and identifying the supporting evidence and administrative regulations. A copy of the decision shall be mailed to the recipient and his representative.

(5) If the reconsideration decision is adverse to the recipient, he may then appeal to the department for a hearing in accordance with this administrative regulation. The appeal shall be filed within fifteen (15) days of the date the recipient is notified of the reconsideration decision, any request may be filed with the utilization review agency or directly with the department. If filed with the utilization review agency, they shall forward the request with appropriate medical records and any other necessary documentation to the department.

(6) When a negative decision has been appealed to the department, the appeal shall be processed as set forth in Sections 3, 4, 5, and 6 of this administrative regulation.

Section 19. Limitation of Fees. (1) Although the department and its officers and employees, either in their official or personal capacity, shall not be liable for payment of any attorney fees, the department shall in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (briefs included) of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) $300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted, either in whole or in part, from public assistance payments otherwise due and payable to the recipient.

Section 20. Hearings and Appeals Relating to Decisions to Reclassify or Transfer Persons with Mental Retardation in State Institutions. Hearings and appeals relating to decisions to reclassify or transfer persons with mental retardation in state institutions shall be in accordance with the requirement of KRS 210.270.

Section 21. Burden of Proof. In all proceedings conducted pursuant to this administrative regulation, the burden of proving eligibility or coverage shall be borne by the applicant or recipient.

Section 22. Material Incorporated by Reference. (1) The form PAFS-78, revised May 1996, necessary for hearings and appeals in the Medicaid Program shall be incorporated by reference in this administrative regulation.

(2) The form incorporated by reference may be reviewed at the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The form 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.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore (564-5020)

(1) Type and number of entities affected: all applicants for or recipients of the Medicaid Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Considered budget neutral*.

2. Continuing costs or savings: Considered budget neutral.

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: None

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

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: See item #10.

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This is considered budget neutral because the hearing and appeals process is not being changed. The regulatory material concerning the hearing and appeals process is being moved from a Department for Social Insurance's regulation to a Department for Medicaid Services' regulation.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise 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.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(New Administrative Regulation)

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, 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. The administrative regulation sets forth the provisions relating to Medicaid provider enrollment, disclosure, and documentation requirements.

Section 1. Definitions. (1) "Applicant" means a person or entity who submits an application to become a Medicaid provider.

(2) "Application" means the completion and submission of a Medicaid provider agreement and any required addendum specific to a provider type, which is the contract between the provider and the department for the provision of Medicaid services.

(3) "Cabinet" means the Cabinet for Health Services.

(4) "Claim" means any request for payment under the Medicaid Program that relates to each individual billing submitted by a provider to the department which details services rendered to a recipient on a specific date(s). The claim may be either a line item of service or all services for one (1) recipient on a bill.

(5) "Department" means the Department for Medicaid Services and its designated agents.

(6) "Disclosing entity" means a Medicaid provider or the fiscal agent for the department.

(7) "Disclosure" means the provision of information in accordance with the requirements shown in 42 CFR 455, Subpart B.

(8) "Exclusion" means as defined in 907 KAR 1:671.

(9) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.

(10) "Furnish" means as defined in 907 KAR 1:671.

(11) "Managing employee" means as defined in 907 KAR 1:671.

(12) "Provider" means as defined by KRS 205.8451.

(13) "Recipient" means as defined by KRS 205.8451.

(14) "Services" means medical care, services, or supplies provided to Medicaid recipients.

(15) "Subcontractor" means as defined in 907 KAR 1:671.

(16) "Terminated" means as defined in 907 KAR 1:671.

(17) "Unacceptable practice(s)" means as defined in 907 KAR 1:671.

Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.

(a) The department shall contract with only those providers or entities who can demonstrate that they are qualified in accordance with 907 KAR 1:671 as determined by the department to participate as a provider. The department reserves the right to contract or not contract with any potential provider.

(b) All providers or entities who wish to participate in the Medicaid Program shall be enrolled as participating providers prior to being eligible to receive reimbursement in accordance with federal and state laws.

(2) New enrollments. Any provider or entity interested in participating as a Medicaid provider shall be required to submit an application for enrollment in accordance with this section.

(3) Enrolled providers. Upon receiving notice from the department, all existing providers or entities enrolled as participating providers in the Medicaid Program shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.

(a) Providers shall have thirty-five (35) days from the date of the notice to submit a completed and signed application to the department.

(b) The notice shall inform the provider that failure to return the completed and signed application within thirty-five (35) days from the date of the notice shall result in termination of participation.

(c) Submission of the application within thirty-five (35) days from the date of the notice shall permit the continuation of the existing provider participation until the application for enrollment the Medicaid Program has been approved or denied and notice has been sent to the provider.

(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and reenroll providers, if necessary, for effective management of the Medicaid Program.

(4) Application for enrollment as a participating provider shall be processed in the following manner:

(a) All applicants for participation shall complete and sign a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity, pursuant to 31 USC 1352, provide proof of a valid professional license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application.

(b) The department may require any additional clarifying information from the applicant with regard to qualifications for participation. If the applicant does not respond within the time period specified in the request, the application for participation may be denied unless an extension of time is requested by the provider and granted by the department.

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards as promulgated under KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d) The department shall complete its application review and make an enrollment determination within ninety (90) days after receipt of the completed application and any additional information requested by the department. The department may take additional time for the decision when necessary for resolution of issues or disputes. However, notice shall be sent to the applicant in those matters requiring additional time to process.

(5) Approval of an application.

(a) Upon approval of an application, the provider shall be issued an identifying number, known as a provider number, which shall be used exclusively by the provider for billing and identification purposes.

(b) A provider's participation shall begin and end on the dates specified in the notification of approval of program participation, unless the provider participation is otherwise terminated in accordance with this administrative regulation, 907 KAR 1:671, or other applicable state or federal laws.

(6) By enrolling, the provider, its officers, directors, agents, employees, and subcontractors agree to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Furnish, upon request, all information regarding the nature and extent of services and claims for payment submitted by, or on behalf of, the provider, to:

1. The Cabinet for Health Services,
2. The department;
3. The Attorney General;
4. The Auditor of Public Accounts;
5. The Secretary of the United States Department of Health and Human Services; and
6. The Office of the United States Attorney;

(c) Comply with the disclosure requirements of Section 3 of this administrative regulation;

(d) Comply with the applicable advance directives requirements of 42 USC 1396a(w) with regard to the right to accept or reject life-saving medical procedures as described in KRS 311.621 et seq;

(e) Accept payment from Medicaid as payment in full for all care, services, and supplies billed to the Medicaid Program, except with regard to copayments and beneficiary liability, if any;

(f) Submit claims for payment only for care, services, and supplies actually furnished to eligible beneficiaries and medically necessary or otherwise authorized by law;

(g) Provide true, accurate, and complete information in relation to any claim for payment;

(h) Permit review or audit of all books or records or, at the discretion of the auditing agency, a sample thereof, relating to services furnished and payments received under Medicaid, including recipient histories, case files, and recipient specific data as listed below. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage.

(i) Not engage in any activity which would constitute unacceptable practice;

(j) Comply with all terms and provisions contained in the provider agreement; and

(k) Comply with all applicable federal and state statutes and administrative regulations relating to their provider type and provision of services under the Medicaid Program;

(l) Bill third party payors in accordance with Medicaid statutes and administrative regulations.

(7) Denial of an application for participation.

(a) Reasons for denial of application for participation shall include the following factors:

1. Any false representation, omission, or failure to disclose of any material fact in making an application;

2. Any suspension, exclusion, termination, or involuntary withdrawal from participation currently in effect in any governmental medical insurance program as a result of fraud or abuse of that program;

3. Any false representation or omission of an application for any license, permit, certificate, or registration related to a health care profession or business;

4. Any previous failure to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from the department or a state or federal licensing, certifying, or auditing agency;

5. A current investigation, indictment or conviction for fraud and abuse or unacceptable practice in the Medicaid Program in Kentucky or any other state, the Medicare Program, or any other publicly funded health care program;

6. Failure to comply with any Medicaid policy as specified in the Kentucky statutes or administrative regulations of the department; or

7. Failure to pay any outstanding debt owed to the department.

(b) If an application is denied, the applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed in accordance with 907 KAR 1:671.

(c) Notice of denial of enrollment. A written notice of the denial shall be mailed to the applicant's last known address and contain the following:

1. The reason for the denial; and

2. The date in which the applicant may reapply for enrollment.

(d) The denial shall be effective upon the date of the written notice.

(8) A provider may request limited enrollment for a time, not to exceed thirty (30) days in an exceptional situation for emergency services provided to an eligible beneficiary. The department shall make an enrollment determination of the exceptional circumstances and notify the provider in writing of its decision.

Section 3. Required Provider Disclosure. (1) Providers and the fiscal agent shall comply with the disclosure of information requirements contained in 42 CFR 455 Subpart B and KRS 205.8477.

(2) Time and manner of disclosure.

(a) The required provider information specified in 42 CFR 455, Subpart B shall be provided:

1. Upon application for enrollment;

2. Annually thereafter; and

3. Within thirty-five (35) days of the request by the department or the United States Department of Health and Human Services.

(b) The disclosure requirement may coincide with the certification or recertification periods except when the provider is certified other than on an annual basis.

(3) If the provider or fiscal agent fails to disclose required information within the time period specified, the provider shall be terminated from participation in the Medicaid Program on the day following the last day for submittal of the required information in accordance with 907 KAR 1:671.

(4) The provider shall file an amended, signed ownership and disclosure form with the department within thirty-five (35) days from the change in the following:

(a) Ownership or control;

(b) The managing employee or management company; or

(c) A provider's federal tax identification number.

(5) Failure to comply with the requirements may result in termination from the Medicaid Program.

Section 4. Required Provider Documentation. (1) Each provider shall maintain documentation of:

(a) Care, services, or supplies provided to an eligible beneficiary;

(b) The recipient's medical record or other provider file, as appropriate, which shall demonstrate that the care, services, or supplies billed for, were actually performed or delivered;

(c) The diagnostic condition necessitating the service performed or supplies provided; and

(d) Medical necessity as substantiated by appropriate documentation including an appropriate medical order.

(2) A provider who is reimbursed using a cost-based method shall maintain all fiscal and statistical records and reports which are used for the purpose of establishing rates of payment made in accordance with Medicaid policy, and all underlying books, records, documentation and reports which formed the basis for the fiscal and statistical records and reports.

(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:

(a) The date of final payment for services;

(b) The date of final cost settlement for cost reports; or

(c) The date of final resolution of disputes, if any.

(4) If any litigation, claim, negotiation, audit, investigation, or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until the latter of:

(a) The completion of the action and resolution of all issues which arise from it; or

(b) The end of the regular five (5) year period.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 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, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621. (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore (564-5020)

(1) Type and number of entities affected: All providers participating in the Medicaid Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: 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: Considered budget neutral.

2. Continuing costs or savings: Considered budget neutral.

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: None

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

(8) Assessment of expected benefits:

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

(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: This regulation is being promulgated to create an individual subject matter regulation concerning Medicaid provider claims processing to comply with KRS Chapter 13A requirements. This subject matter was previously contained in 907 KAR 1:671. No policy changes have been made.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise 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.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(New Administrative Regulation)

907 KAR 1:673. Claims processing.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.45, 42 USC 1396a, b, c, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services, 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 provisions relating to Medicaid provider claims processing requirements.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Claim" means any request for payment that relates to each individual billing submitted by a provider to the department which details services rendered to a beneficiary on a specific date(s). The claim may be either a line item of service or all services for one (1) beneficiary on a bill.

(3) "Department" means the Department for Medicaid Services.

(4) "Provider" means as defined in 907 KAR 1:002.

(5) "Recipient" means as defined by KRS 205.8451.

(6) "Services" means as defined in 907 KAR 1:671.

(7) "Unacceptable practice" means as defined in 907 KAR 1:671.

(8) "Withholding" means as defined in 907 KAR 1:671.

Section 2. Claims Processing. (1) Claim submittal.

(a) A provider shall submit a claim, using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the date the service was rendered.

(b) A claim may be submitted on:

1. A paper form;

2. An electronic billing process; or

3. Any form approved by the department.

(c) A provider shall submit additional clarifying documentation for claims processing when required by the department.

(d) By submitting a claim a provider shall be:

1. Liable for the accuracy of all claims submitted by the provider, its representatives employees or any individual or entity working on the provider's behalf; and

2. Responsible for reviewing the statement of payment or remittance statement to assure that paid claims shown are true and correct, and for informing the department of any discrepancy.

(e) If a provider submits a claim electronically, the provider's acceptance of payment shall be considered to be the provider's certification that a paid claim is true and correct; and

(f) Any submittal of a false claim, statement, or document shall be considered an unacceptable practice and subject to all the remedies available to the department.

(2) Claim payment.

(a) Payment shall be made by the department, if:

1. The information required to pay the claim is complete;

2. The claim is not under review for medical necessity;

3. The provider has submitted all reports and information relevant to claims required by the department; and

4. The department is not withholding the provider's payments in accordance with 907 KAR 1:671.

(b) The department may audit claims paid to determine if any unacceptable practices have occurred that may result in sanctions.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: April 4, 1996

FILED WITH LRC: April 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on, May 21, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by, May 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, Jr., Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All providers participating in the Medicaid Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Considered budget neutral.

2. Continuing costs or savings: Considered budget neutral.

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: None

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

(8) Assessment of expected benefits:

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

(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: This regulation is being promulgated to create an individual subject matter regulation concerning Medicaid provider claims processing to comply with KRS Chapter 13A requirements. This subject matter was previously contained in 907 KAR 1:671. No policy changes have been made.

(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 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.

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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of April 15, 1996

The April meeting of the Administrative Regulation Review Subcommittee was held on Monday, April 15, 1996, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jesse Crenshaw, Chairman, called the meeting to order, and the secretary called the roll. The minutes of the March 4, 1996 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman, Senators Fred Bradley, Nick Kafoglis, John David Preston; Representative Jimmy Lee, James E. Bruce.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Susan Wunderlich, Peggy Jones, Andrew Griffin, Alice Hobson.

Guests: Sue McDade, Dennis L. Taulbee, Ken Walker, Council on Higher Education; Maryellen B. Allen, Brenda Wise, State Board of Elections; Daniel F. Egbers, Personnel Cabinet; Donald R. Speer, Patrick R. Hughes, Karen Powell, Gail Prewitt, Finance and Administration Cabinet; Denise Placido, Department for the Blind; L. Wayne Tune, Mark Brengelman, State Board of Architects; James Daniels, John Grant, Real Estate Appraiser Board; Camille Bathurst, Mike Denney, Kentucky Lottery Corporation; Edwin F. Crowell, John Wilson, Pete Pfeiffer, Jeff Sole, John Wilson, Bob Bates, Tom Young, Department of Fish and Wildlife Resources; Jack Damron, Brenda Priestley, Department of Corrections; Charles Johnson, Department of State Police; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Department of Education; Rosemary Oaken, Office of Education Accountability; Bill Ralston, Kembra Taylor, Labor Cabinet; Marcy D. Ches, Department of Workers' Claims, Brian Gilpin, Rick Bender, Eugene D. Attkisson, Department of Mines and Minerals; Karen Doyle, Larry McCarthy, Ked Fitzpatick, Robert P. Calhoun, Dee Swain, Department for Health Services; John P. Gabbard, Kentucky Oil and Gas Association; Ashar S. Tullis, SLS-KARP-VNA; Anna J. Mojsejenko, The Kentuckians for the Commonwealth; Susan Smith, Kentucky Society of Certified Public Managers; J. W. Kinzer, Kinzer Drilling Co.; Tom Fitzgerald, Kentucky Resources Council; Bill Doll, Kentucky Medical Association.

The Subcommittee determined that the following administrative regulation, as amended, does not comply with statutory requirements:

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. Mr. Rick Bender, Director of the Division of Oil and Gas, Mr. Gene Atkisson, General Counsel, and Brian Gilpin, appeared on behalf of the Department of Mines and Minerals.

Subcommittee staff stated that: (1) During the public hearing process on this administrative regulation several individuals submitted written comments; (2) after the Statement of Consideration concerning this administrative regulation had been filed, the Department and all parties who had submitted written comments met again to clarify some further issues relating to this administrative regulation; (3) many of the issues discussed were not raised in the written comments submitted during the comment period; (4) subsequent to this meeting, the parties, including environmentalists and industry representatives, agreed to additional amendments that the Department wanted the Subcommittee to consider; (5) KRS 13A.320(1)(b)3. requires that this amendment be proposed by a Subcommittee member rather than the Department since it contains issues that were not raised during the public comment period; and (6) Subcommittee staff understood that these amendments have been agreed to by all parties who submitted written comments.

Department staff stated that the amendment had been agreed to by all interested parties. The amendment was proposed by Representative Bruce; and was approved without objection.

Senator Preston stated that: (1) he had received correspondence from the Oil and Gas Association and Kentuckians For The Commonwealth (KFTC) who raised concerns about the administrative regulation; (2) the Oil and Gas Association: (a) objected to the requirement in Section 5 that the operator submit a copy of the deed or lease with an application, or provide the written consent of the surface owner to conduct the oil and gas operations; (b) questioned the consistency of Section 5 with statutory language; and (c) stated that it appeared that a provision similar to Section 5 was deleted from oil and gas legislation, House Bill 591, that was enacted during the 1994 Session.

Senator Preston asked if the Department had any recollection that a provision similar to Section 5 was deleted from House Bill 591. Mr. Bender stated that: (1) he attended some of the meetings when House Bill 591 was discussed; (2) many different issues were discussed relating to the adoption of House Bill 591; (3) the interested parties may have said they did not feel a provision like Section 5 was necessary; (4) the Department believes that Section 5 is needed primarily because a dissenting party is almost always involved when an application for an oil and gas lease is considered; (5) the Department believes that in order to issue a permit to drill on a severed tract, it must have the assurance that a document exists granting the operator the right to drill; and (6) Section 5 assures that there is some documentation to substantiate the oil and gas operator's claim to drill on the land.

Senator Preston stated that: (1) Section 5 provides that if a dispute arises over the validity of a claim, the Department will not adjudicate the dispute; (2) while the Department states that it does not want to get into a question of litigating title questions, it requires the prospective permittee to provide proof of title.

Mr. Bender stated that: (1) especially if there is a dissenting party, the Department needed evidence in its files that would assure it that an operator has a right to be drilling at a given location; and (2) the Department also takes the position that it will not adjudicate a disputed claim, based on OAG 69 328 which provides that: the Department will not take on the Herculean task of settling boundary disputes.

In response to Senator Preston's request for the statutory authority for the requirement for evidence of the right to drill, Mr. Bender stated that KRS 353.5901 provides that, in its application for permit, the Department may request any information that the Department deems necessary.

Senator Preston stated that if the statutory authority the Department on which the Department bases its requirement is the language in subsection (d) that permits the Department to obtain any additional information it may require, the same theory upon which this is based would authorize a requirement for the original copy of the Magna Carta signed by King John. Mr. Bender stated that in a permit application for a severed mineral tract, the surface owner who has not been involved in mineral exploration or drilling has a right to see what kind of document or claim gives the oil and gas operator the right to enter upon his land.

Senator Preston: (1) stated that: (a) the Oil and Gas Association referred to Department of Natural Resources and Environmental Protection v. No. 8 Limited of Virginia, 528 S.W.2d 684 (Ky, Ct. App. 1975); and (b) while this case dealt with strip mining, it contains language stating that "the consent of the surface owner bears no rational relationship to environmental conservation...."; and (2) asked if the Department felt that it was its job to protect the environment. Mr. Bender stated that the Department's job: (1) was

not entirely to protect the environment; and (2) was also to protect the correlative rights of all parties involved, which includes protecting a surface owner who has no correlative rights. In response to Senator Preston request for the statute that gave the Department the authority to protect correlative rights of parties, Mr. Atkisson stated that: (1) there is language in the preamble of the Oil and Gas statute, KRS 353.500, that sets out the philosophical responsibilities of the Division of Oil and Gas, and (2) those responsibilities include the protection of correlative rights.

Senator Preston stated that the KFTC indicated that the administrative regulation does not provide standards for water testing. Mr. Bender stated that: (1) the KFTC's concern about lack of water testing related to KRS 353.597; (2) this administrative regulation was promulgated under KRS 353.5901 rather than KRS 353.597; (3) if water testing is an issue, the: (a) administrative regulation should be promulgated under KRS 353.597, and apply universally rather than be limited to severed mineral tracts as required by KRS 353.5901; and (b) the Department did not believe this administrative regulation was appropriate for a water testing program because a water testing requirement should be promulgated in a separate administrative regulation, not in an administrative regulation dealing only with severed mineral tracts.

Senator Preston stated that: (1) the KFTC also objected to the Department issuing a permit when there was a boundary dispute; and (2) it appeared that both industry and environmental groups objected to that part of the administrative regulation.

Senator Preston stated that there were no provisions to accommodate a surface owner who could not afford $100 permit fee or the $100 fee for mediation. Mr. Bender stated that KRS 353.5901: (1) requires that the $100 mediation fee shall be paid by all parties to the mediation; and (2) does not permit the Department to allow for hardship.

In response to a question by Senator Preston to discuss the issues relating to statutory and regulatory authority raised by the initial review, Subcommittee staff stated that: (1) the initial staff review does not indicate whether or not the administrative regulation complied with statutory authority; (2) the provisions relating to mediation appeared to be within the purview of the Division to determine mediation processes and procedures, so long as they are adequately spelled out; (3) the questions raised by the initial staff review concerning Section 9 related to water quality testing requirements; and (4) while Section 9 clearly was the most troubling in the administrative regulation as initially filed, it was deleted from the administrative regulation when it was amended after hearing.

The Subcommittee approved a motion by Senator Preston to find this administrative regulation deficient: (1) specifically because the language in Section 5, which requires either the written consent of the surface owner to conduct the operation or a copy of the deed giving the operator the right to drill, was inconsistent with KRS 353.5901(1); and (2)(a) during the 1994 Regular Session; while agreement on some issues raised by House Bill 591 had been reached, agreement could not be reached on this issue; (b) language similar to Section 5 was deleted from House Bill 591; and (c) the Department could not by the promulgation of an administrative regulation impose requirements rejected by the General Assembly. .

This administrative regulation was amended to: (1) require the publication of a "notice of intended activity", rather than a "request for information on the whereabouts of surface owner" in various sections of the administrative regulation; (2) establish the information that is to be included in the "notice of intended activity"; (3) delete various superfluous subsections that indicate that pit closure requirements, hazardous waste, solid waste, special waste requirements, and water quality determinations are to be made by the Natural Resources Cabinet rather than the Department of Mines and Minerals; and (4) renumber remaining sections accordingly.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Council on Higher Education: Public Educational Institutions

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes. Dennis Taulbee, General Counsel, and Kenneth Walker, Deputy Executive Director, appeared before the Subcommittee, representing the Council. This administrative regulation was extensively amended for compliance with the drafting requirements of KRS Chapter 13A.

State Board of Examiners and Registration of Architects

201 KAR 19:035. Qualifications for examination. Wayne Tune, Executive Director of the Board, and Mark Brengelman, Assistant Attorney General assigned to the Board, appeared before the Subcommittee. This administrative regulation was amended to: (1) correct citation of statutes in the RELATES TO and STATUTORY AUTHORITY paragraphs; (2) reformat the NECESSITY AND FUNCTION paragraph; (3) amend Section 1 to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) delete the language in Section 2 and insert new language in lieu thereof to: (a) comply with the: 1. format requirements of KRS 13A.220(4); 2. drafting requirements of KRS 13A.222(4); and 3. delete language that repeats or summarizes statutory language pursuant to KRS 13A.120(2)(e), (f).

Kentucky Real Estate Appraisers Board

201 KAR 30:040. Standards of practice administrative regulation. Jim Daniels, Executive Director of the Board and John Grant, Assistant Attorney General assigned to the Board, appeared before the Subcommittee. This administrative regulation was amended to: (1) cite applicable federal law in the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION paragraphs; and (2) amend the NECESSITY AND FUNCTION paragraph to: (a) cite applicable federal law and regulation; and (b) amend language, pursuant to the drafting requirements of KRS 13A.222(4).

Kentucky Lottery Corporation

202 KAR 3:020. Procurement procedures. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended correct the citation of statutes authorizing the promulgation of this administrative regulation; (2) the NECESSITY AND FUNCTION paragraph was amended to (a) delete "adopt" and insert "promulgate" in lieu thereof, because an administrative body promulgates an administrative regulation that is adopted after completion of the review procedure established by KRS Chapter 13A; and (b) cite the specific statutory authority requiring the promulgation of this administrative regulation; (3) the language in Section 1 was deleted because it: (a) did not implement applicable statutes by establishing conditions or requirements; and (b) contained explanatory material which, had it been required, should have been set out in the NECESSITY AND FUNCTION paragraph; (4) the incorporation by reference statement was amended to comply with the format established by KRS Chapter 13A; and (5) the material incorporated by reference was amended on: (a) page 7, line 6, Section II(D)(2)(General Provisions)(Conduct of Purchasing), to provide that guidelines for the sale, lease, or disposal of the Lottery Corporation's surplus property would be governed by the guidelines contained in KRS 45A.045(4) and 200 KAR 5:021 until the Corporation adopted its own guidelines; (b) page 15, Section III(D)(2)(Small Purchases)(Operational Guidelines and Record Keeping), to provide that the purchasing requirements established in paragraphs 2(a) through (c) of Section II would be followed until the Corporation adopted small purchase guidelines;

(c) page 29, Lines 1 and 5, Section VI(B)(Contract Administration)(Cost Principles), to provide that the cost principle guidelines established by the Finance and Administration Cabinet in 200 KAR 5:317 would be followed until the Corporation adopted its own cost principle guidelines; and (d) page 29, to delete "promulgate" because the Corporation would adopt guidelines that would be contained in the administrative regulation promulgated by the Corporation.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:016. Use of public lands and waters at department owned lakes. Tom Young and Pete Pfeiffer appeared before the Subcommittee, representing the Department. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A and to change the dates for expiration of existing boat dock permits, for the purchase of new permits, and the date for compliance with these provisions. Mr. Young stated that this would give eighteen months for boat dock owners to comply. Senator Preston asked if there were still objections. Senator Kafoglis said that he believed the 18 month time allowance to be reasonable.

Game

301 KAR 2:222 (&E). Waterfowl hunting requirements. This administrative regulation was amended for clarity and for compliance with the drafting requirements of KRS Chapter 13A.

301 KAR 2:223 (&E). Waterfowl reporting requirements. This administrative regulation was amended for clarity and for compliance with the drafting requirements of KRS Chapter 13A.

Licensing

301 KAR 5:020 (&E). License agent requirements and responsibilities. This administrative regulation was amended for clarity and for compliance with the drafting requirements of KRS Chapter 13A.

301 KAR 5:030 (&E). Purchasing licenses and obtaining replacement licenses. This administrative regulation was amended for clarity.

Department of Corrections: Office of the Secretary

501 KAR 6:060. Northpoint Training Center. Jack Damron and Tamela Biggs appeared before the Subcommittee, representing the Department. This administrative regulation was amended by making a grammatical correction.

501 KAR 6:130. Western Kentucky Correctional Complex. This administrative regulation was amended to delete from WKCC 09-00-01 incorporated material that conflicts with incorporated material found in CPP 15.8 in 501 KAR 6:020, concerning the drug test policy. It was amended to delete everything but the breathalyzer test, which isn't in CPP 15.8.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:412 & E. Fall protection.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

State Board of Elections: Forms and Procedures

31 KAR 4:061. Repeal of 31 KAR 4:060. Mary Ellen Allen, Assistant Attorney General, and Brenda Wise appeared before the Subcommittee, representing the State Board of Elections. Senator Kafoglis asked if there were not going to be a biennial purge, would the voting rolls be purged periodically. Ms. Allen stated that the National Voter Registration Act requires purging and the rolls would be purged in conformity with the statutes, on a continuing basis, as required by the Motor Voter Act. Senator Kafoglis asked how long a person could go without voting before being purged. Ms. Allen stated that a person would never get purged for not voting. She explained that if the Board gets a change of address for a person and the Board doesn't get a confirmation for two federal elections, then the person can be purged.

31 KAR 4:070. Recanvass procedures.

Personnel Cabinet: Classified

101 KAR 2:036. Compensation plan and pay incentive systems.

Unclassified

101 KAR 3:045. Compensation plan and compensation incentive systems.

Finance and Administration Cabinet: Purchasing

200 KAR 5:314. Disclosure of contractor's financial records and information to certain governmental entities. Patrick Hughes, Attorney and Karen Powell, General Counsel, appeared before the Subcommittee, representing the Cabinet. Representative Lee asked if the question of statutory authority had been clarified. Staff stated the belief that the administrative regulation was proper. Senator Kafoglis, addressing the statutory authority question, stated that in serving on Program Review, he vaguely remembers that the court said the Subcommittee could have the information they were seeking but the public could not. Ms. Powell stated that that was what the Cabinet was trying to correct, based on the language of the court case. Ms. Powell said that the court mainly centered on contractual language and the Cabinet is clearing this up in the requirements of this administrative regulation by specifically requiring contractual language that the information will be available unless specifically exempted. Senator Kafoglis asked if this would only apply to future contracts. Ms. Powell said that was correct.

Personnel Pilot Programs

200 KAR 22:120E. Comprehensive Employment Manual of the Kentucky Department for the Blind: Business Enterprise Program for use in the Pilot Personnel Program. Denise Placido, Deputy Commissioner for the Department, and Gail Prewitt, Project Manager for the Steering Committee, appeared before the Subcommittee. In response to Senator Preston's request for an explanation of the facts supporting the promulgation of an emergency administrative regulation, Ms. Placido stated that the Department wanted to begin implementation immediately because of the July, 1998, termination date for personnel pilot projects. Senator Preston: (1) asked whether the reasons for the promulgation of this administrative regulation as an emergency administrative regulation met the KRS Chapter 13A definition of emergency administrative regulation, such as a loss of federal funds, or a threat to life, property, or liberty; and (2) stated that there was not a true emergency requiring the promulgation of this administrative regulation as an emergency administrative regulation. Representative Bruce stated that: (1) the Subcommittee would review the ordinary administrative regulation in the near future; (2) he was inclined to agree with Senator Preston that, sometimes, emergency administrative regulations are not the result of true emergencies; (3) thanked Senator Preston for drawing the attention of the Subcommittee to this issue; (4) suggested that the Subcommittee notify administrative bodies that, unless an administrative body could justify the emergency, an emergency administrative regulation should not be promulgated; and (5) an administrative body should be better prepared to explain the facts supporting and justifying its promulgation of an emergency administrative regulation.

Subcommittee staff stated that the: (1) comprehensive employment manual incorporated by this administrative regulation should be amended to make it clear that KRS Chapter 18A permitted a state employee to attach a comment to any item in his personnel file; and (2) Department had agreed to amend the ordinary administrative regulation to state this right.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:049. Seasons for furbearers and small game of specified areas.

301 KAR 2:221 (&E). Waterfowl seasons and limits.

301 KAR 2:224 (&E). Waterfowl hunting zones.

Water Patrol

301 KAR 6:001. Definitions for 301 KAR Chapter 6.

301 KAR 6:020. Boating safety equipment.

Justice Cabinet: Juvenile Detention Facilities

500 KAR 6:110E. Medical and Health Care Services.

500 KAR 6:150E. Programs.

500 KAR 6:190E. Waiver of compliance.

500 KAR 6:200E. Physical plant.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

Department of State Police: Trial Board Proceedings

502 KAR 50:010. Admissibility of evidence. Charles Johnson, attorney, appeared before the Subcommittee, representing the Department. Senator Preston asked about the availability of evidence held by other agencies or private persons or organizations. Mr. Johnson said that anything held by another agency or a private person would be in the possession of Kentucky State Police before they instituted trial board proceedings and thus be disclosed to the officer through the discovery mechanism.

Education, Arts, and Humanities Cabinet: Kentucky Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:076. Repeal of 701 KAR 5:075, Antinepotism certifications of superintendents. Kevin Noland appeared on behalf of the Kentucky Department of Education. Mr. Noland stated that: (1) In 1994, Senator Kafoglis sponsored SCR 84 that was intended to reduce paperwork and reporting requirements; and (2) this administrative regulation is being repealed pursuant to the mandate of SCR 84.

In response to questions from Senator Kafoglis, Mr. Noland stated that: (1) the discovery of a violation of the nepotism statute would have to be reported to the Department before there would be an investigation; and (2) this reporting requirement applied to all violations of law.

Office of District Support: School Terms, Attendance and Operation

702 KAR 7:065 (&E). Designation of agent to manage high school interscholastic athletics. In response to questions from Senator Kafoglis, Mr. Noland stated that this administrative regulation: (1) implements the statute which provides that any decision by the Kentucky High School Athletics Association (KHSAA) can be reviewed by and appealed to the State Board of Education; (2) continues to require that the State Board of Education oversee the KHSAA's regulation of High School Athletics; and (3) incorporates by reference the KHSAA by-laws which are updated and repromulgated each year.

Senator Kafoglis asked how the State Board provided oversight to the KHSAA. Mr. Noland stated that: (1) the State Board has a liaison who attends every meeting of the KHSAA's Board of Control; (2) at every meeting of the State Board of Education, the Commissioner of the KHSAA is required to appear and make a report to the State Board; and (3) there are several provisions in this administrative regulation that require reporting and oversight by the State Board of Education.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:317 & E. Special Industries.

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

Cabinet for Health Services: Department for Medicaid Services

Administrative body personnel and Subcommittee stated that: (1) the following two emergency administrative regulations: (a) are similar to the ordinary administrative regulations that were found deficient by the Subcommittee and had expired; (b) would expire; and (2) the Cabinet: (a) was negotiating with physicians; (b) would file emergency administrative regulations to replace the expired ordinary and emergency administrative regulations that reflected the agreements reached with interested parties to date; and (c) ordinary administrative regulations to be filed by the Cabinet would reflect further agreements with interested parties.

907 KAR 1:009E. Physicians' services.

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

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 Nursing

201 KAR 20:070E. Licensure by examination.

Kentucky Spinal Cord and Head Injury Research Program

202 KAR 4:010 (&E). Spinal Cord and Head Injury Research Program.

Transportation Cabinet: Department of Vehicle Regulation" Division of Motor Carriers

601 KAR 1:029. Definitions relating to 601 KAR 1:030 through 601 KAR 1:145.

601 KAR 1:030. Hearings.

601 KAR 1:031. Procedure when no protest to notice of hearing is filed.

601 KAR 1:040. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:320E. Air contaminants.

803 KAR 2:425E. Toxic and hazardous substances.

803 KAR 2:500E. Maritime employment.

Cabinet for Families and Children: Department for Social Insurance: Public Assistance

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

Cabinet for Health Services: Department for Medicaid Services

907 KAR 1:060E. Medical transportation.

907 KAR 1:061E. Payments for medical transportation.

Department for Mental Health and Mental Retardation: Substance Abuse

908 KAR 1:340E. Narcotic Treatment Programs.

OTHER BUSINESS

Transportation Cabinet: Department of Vehicle Regulation: Motor Vehicle Tax

601 KAR 9:200. Registration of titling of rebuilt motor vehicles. Sandy Pullen appeared on behalf of the Transportation Cabinet. Ms. Pullen stated that: (1) This administrative regulation was found deficient by the Subcommittee, April, 1995; (2) The problem with this administrative regulation was that if a vehicle with a perfectly clean title had a salvage title in the past, or had been branded by another state, there was no procedure for putting a brand on the vehicle's title; and (3) House Bill 333, enacted during the 1996 Regular Session, corrected this problem by establishing the required procedure. The Subcommittee approved a motion by

Representative Lee to remove the Subcommittee's finding of deficiency.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:089. Workers' compensation medical fee schedule for physicians. Marcie Ches, attorney for the Department, appeared before the Subcommittee. In response to Representative Bruce's question as to whether he wished to speak in support or in opposition to the removal of the finding of deficiency on this administrative regulation, Mr. Bill Doll, Kentucky Medical Association, stated that if the Ms. comments clearly reflected his understanding of what the Department was going to do, he would not comment on this administrative regulation. Ms.Ches stated that House Bill 298, enacted during the 1996 Regular Session of the General Assembly: (1)(a) specifically approved this administrative regulation; and (b) stated that it: 1. complies with statutory authority; 2. meets legislative intent; and 3. does not conflict with KRS Chapter 342; and (2) The Department: (a) has begun the process for a new medical fee schedule and has held a hearing on the Notice Of Intent filed for the administrative regulation; and (b) wants to keep the current medical fee schedule in place until the new schedule becomes effective.

Ms. Ches confirmed Mr. Doll's statement that the legislation enacted during the 1996 Regular Session of the General Assembly requires that the schedule currently in place is intended to be fair, current, and reasonable within today's marketplace.

The Subcommittee approved a motion by Senator Kafoglis to remove the Subcommittee's finding of deficiency.

Cabinet for Human Resources: Department of Health Services: Emergency Medical Services and Ambulance Service Providers

Representative Lee stated that: (1) House Bill 492, enacted during the 1996 Regular Session of the General Assembly: (a) addressed the concerns he and the Subcommittee had with regard to the four administrative regulations listed below; and (b) corrected the problems with these administrative regulations; (2) since House Bill 492 did not contain an emergency clause, it was necessary to keep these administrative regulations until its July effective date; and (3) all parties involved have: (a) been informed of the need to keep these administrative regulations; and (b) agree with the removal of the finding of deficiency. The Subcommittee approved a motion by Representative Lee to remove its findings of deficiency on the four administrative regulations listed below.

902 KAR 14:060 (& E). Nonemergency health transportation services.

902 KAR 14:070 (& E). License procedures and fee schedule for ambulance service providers and tiered response emergency medical services.

902 KAR 14:080 (& E). Basic and advanced life support ground ambulance providers.

902 KAR 14:090 (& E). Air ambulance providers.

The Subcommittee adjourned at 11:15 a.m. until May 6, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

HOUSE TRANSPORTATION COMMITTEE
Meeting of March 14, 1996

The following administrative regulations were available for consideration by the House Transportation Committee during its meeting of March 14, 1996, having been referred to the Committee on March 4, 1996, pursuant to KRS 13A.290(6): 603 KAR 3:080

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 March 14, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE TRANSPORTATION COMMITTEE
Meeting of March 21, 1996

The following administrative regulations were available for consideration by the House Transportation Committee during its meeting of March 21, 1996, having been referred to the Committee on March 4, 1996, pursuant to KRS 13A.290(6):

600 KAR 4:010
600 KAR 6:010
600 KAR 6:020
600 KAR 6:030
600 KAR 6:040
600 KAR 6:050
600 KAR 6:060
600 KAR 6:070
600 KAR 6:080

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 March 21, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **K2**

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 **K15**

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 **K24**

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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date

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
Expired		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)

LOCATOR INDEX - EFFECTIVE DATES

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)

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9 KAR 1:021E	214	7-11-95
Expired		1-18-96
11 KAR 8:030E	215	7-12-95
Expired		1-18-96
31 KAR 5:020E	882	10-12-95
Replaced	1452	2-12-96
32 KAR 1:160E	694	8-30-95
Expired		3-19-96
32 KAR 1:170E	883	10-10-95
101 KAR 2:100E	217	7-14-95
Expired		1-18-96
101 KAR 3:010E	223	7-14-95
Expired		1-18-96
200 KAR 5:021E	1778	3-15-96
200 KAR 22:060E	20	6-15-95
Replaced	415	10-13-95
200 KAR 22:090E	884	10-13-95
Replaced	1452	2-12-96
200 KAR 22:100E	1261	11-30-95
Replaced	1511	4-5-96
200 KAR 22:110E	1262	12-11-95
Replaced	1512	4-5-96
200 KAR 22:120E	1553	1-12-96
200 KAR 22:130E	1966	4-1-96
201 KAR 10:050E	1967	3-22-96
201 KAR 11:400E	1446	12-22-95
201 KAR 20:070E	1554	1-25-96
202 KAR 4:010E	1050	11-6-95
301 KAR 2:140E	1968	4-11-96
301 KAR 2:221E	1051	11-3-95
301 KAR 2:222E	1054	11-3-95
301 KAR 2:223E	1057	11-3-95
301 KAR 2:224E	1059	11-3-95
301 KAR 2:225E	695	8-23-95
Replaced	1174	2-12-96
301 KAR 5:001E	697	9-14-95
Replaced	1456	2-12-96
301 KAR 5:010E	698	9-14-95
Replaced	1457	2-12-96
301 KAR 5:020E	1263	12-11-95
301 KAR 5:030E	1265	12-11-95
302 KAR 20:115E	569	7-28-95
Replaced	1179	2-12-96
415 KAR 1:114E	700	8-16-95
Replaced	1596	2-27-96
500 KAR 6:110E	1555	2-14-96
500 KAR 6:150E	1558	2-14-96
500 KAR 6:190E	1559	2-14-96
500 KAR 6:200E	1560	2-14-96
501 KAR 6:020E	1061	11-15-95
Replaced	1357	3-7-96
502 KAR 45:005E	703	8-30-95
Replaced	1305	1-8-96
502 KAR 45:015E	704	8-30-95
Replaced	955	1-8-96
502 KAR 45:025E	705	8-30-95
Replaced	1462	2-12-96
502 KAR 45:035E	706	8-30-95
Replaced	957	1-8-96
502 KAR 45:045E	707	8-30-95
Replaced	1305	1-8-96
502 KAR 45:055E	708	8-30-95
Replaced	1305	1-8-96
502 KAR 45:065E	709	8-30-95
Replaced	960	1-8-96
502 KAR 45:075E	710	8-30-95
Replaced	961	1-8-96
502 KAR 45:085E	711	8-30-95
Replaced	1306	1-8-96
502 KAR 45:145E	570	8-1-95
Replaced	1306	1-8-96
502 KAR 45:150E	712	8-30-95
Replaced	1307	1-8-96
601 KAR 13:090E	1971	4-15-96
601 KAR 13:100E	1973	4-15-96
702 KAR 3:245E	571	8-15-95
Replaced	990	2-12-96
702 KAR 3:246E	573	8-15-95
Replaced	1005	2-12-96
702 KAR 3:270E	1267	12-15-95
Withdrawn		4-8-96
702 KAR 7:065E	1269	12-15-95
704 KAR 20:084E	1271	12-4-95
780 KAR 2:140E	227	7-5-94
Replaced	730	10-5-95
787 KAR 1:010E	229	6-22-95
Replaced	452	11-6-95
787 KAR 1:020E	230	6-22-95
Replaced	454	11-6-95
787 KAR 1:030E	230	6-22-95
Replaced	908	11-6-95
787 KAR 1:040E	230	6-22-95
Replaced	456	11-6-95
787 KAR 1:050E	231	6-22-95
Replaced	457	11-6-96
787 KAR 1:060E	231	6-22-95
Replaced	908	11-6-95
787 KAR 1:070E	232	6-22-95
Replaced	909	11-6-95
787 KAR 1:080E	232	6-22-95
Replaced	461	11-6-95
787 KAR 1:090E	233	6-22-95
Replaced	909	11-6-95
787 KAR 1:100E	234	6-22-95
Replaced	910	11-6-95
787 KAR 1:110E	234	6-22-95
Replaced	466	11-6-95
787 KAR 1:120E	237	6-22-95
Replaced	470	11-6-95
787 KAR 1:130E	237	6-22-95
Expired (ordinary withdrawn)		6-22-95
787 KAR 1:140E	237	6-22-95
Replaced	472	11-6-95
787 KAR 1:150E	238	6-22-95
Replaced	473	11-6-95

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787 KAR 1:170E	239	6-22-95
Replaced	476	11-6-95
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
Resubmitted	1976	4-8-96
787 KAR 1:220E	242	6-22-95
Replaced	483	11-6-95
787 KAR 1:230E	243	6-22-95
Replaced	484	11-6-95
787 KAR 1:240E	243	6-22-95
Replaced	911	11-6-95
787 KAR 1:250E	244	6-22-95
Replaced	487	11-6-95
787 KAR 1:260E	244	6-22-95
Replaced	488	11-6-95
787 KAR 1:270E	245	6-22-95
Replaced	911	11-6-95
787 KAR 1:280E	245	6-22-95
Replaced	491	11-6-95
787 KAR 1:290E	245	6-22-95
Replaced	912	11-6-95
787 KAR 1:300E	246	6-22-95
Replaced	493	11-6-95
787 KAR 1:310E	246	6-22-95
Replaced	495	11-6-95
787 KAR 2:010E	247	6-22-95
Replaced	496	11-6-95
787 KAR 2:020E	248	6-22-95
Replaced	912	11-6-95
787 KAR 2:030E	248	6-22-95
Replaced	912	11-6-95
788 KAR 2:010E	249	6-22-95
Replaced	1082	12-7-95
803 KAR 2:317E	1273	12-6-95
803 KAR 2:320E	252	6-30-95
Expired		1-18-96
Resubmitted	1562	2-15-96
803 KAR 2:403E	255	6-30-95
Expired		1-18-96
803 KAR 2:404E	1275	12-6-95
803 KAR 2:412E	1283	12-6-95
803 KAR 2:425E	257	6-30-95
Expired		1-18-96
Resubmitted	1567	2-15-96
803 KAR 2:500E	259	6-30-95
Expired		1-18-96
Resubmitted	1569	2-15-96
804 KAR 4:320E	575	7-25-95
Replaced	1008	1-8-96
806 KAR 17:066E	1779	2-29-96
815 KAR 8:040E	21	6-6-95
Replaced	915	11-6-95
903 KAR 5:001E	713	8-28-95
Expired		3-19-96
904 KAR 2:015E	1571	1-30-96
904 KAR 2:016E	1064	11-15-94
Withdrawn		12-5-95
Resubmitted	1285	12-5-95
904 KAR 2:116E	1447	1-4-96
904 KAR 2:460E	576	8-7-95
Expired		2-16-96
904 KAR 3:042E	1977	4-15-96
905 KAR 1:360E	1292	11-22-95
907 KAR 1:009E	261	6-30-95
Withdrawn		9-19-95
Resubmitted	885	9-19-95
Expired		4-15-96
907 KAR 1:010E	262	6-30-95
Withdrawn		9-19-95
Resubmitted	886	9-19-95
Expired		4-15-96
907 KAR 1:013E	887	9-28-95
Withdrawn		3-7-96
907 KAR 1:014E	264	6-30-95
Withdrawn		8-10-95
907 KAR 1:015E	266	6-30-95
Withdrawn		8-10-95
907 KAR 1:060E	267	6-30-95
Expired		1-18-96
Resubmitted	1576	1-18-96
907 KAR 1:061E	269	6-30-95
Expired		1-18-96
Resubmitted	1578	1-18-96
907 KAR 1:140E	895	9-27-95
Withdrawn		4-4-96
Resubmitted	1981	4-4-96
907 KAR 1:505E	1071	11-6-95
907 KAR 1:510E	1073	11-6-95
907 KAR 1:675E	1295	12-5-95
907 KAR 1:677E	1299	12-5-95
907 KAR 3:005E	1984	4-15-96
907 KAR 3:010E	1986	4-15-96
908 KAR 1:340E	1582	1-30-96
909 KAR 1:021E	22	6-14-95
Replaced	934	11-15-95
909 KAR 1:055E	23	6-14-95
Replaced	662	11-15-95
909 KAR 1:100E	578	8-15-95
Replaced	1009	1-8-96

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2 KAR 2:040	1509	
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9 KAR 1:010		
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9 KAR 1:015		
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9 KAR 1:020		
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9 KAR 1:030		
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9 KAR 1:035		
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9 KAR 1:040		
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11 KAR 4:040		
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11 KAR 12:060		
As Amended	30	7-6-95
11 KAR 12:070		
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12 KAR 1:115		
Amended	1324	2-15-96
13 KAR 2:045		
Amended	1656	
As Amended	1988	
13 KAR 2:050		
Amended	2040	
15 KAR 1:040	125	
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31 KAR 4:030		
Amended	2041	
31 KAR 4:061	1745	
31 KAR 4:070		
Amended	1662	
31 KAR 4:100		
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31 KAR 4:110		
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31 KAR 5:020		
Amended	1088	
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32 KAR 2:210	814	
As Amended	1302	1-8-96
40 KAR 5:010	2189	
45 KAR 1:030		
Amended	1325	3-7-96
45 KAR 1:040		
Amended	1327	3-7-96
45 KAR 1:050		
Amended	1329	3-7-96
101 KAR 1:325		
Amended	1332	3-7-96
101 KAR 2:036		
Amended	1663	
101 KAR 2:100		
Amended	1089	
Amended	1610	
As Amended	1814	4-5-96
101 KAR 3:010		
Amended	1094	
Amended	1616	
As Amended	1821	4-5-96
101 KAR 3:045		
Amended	1666	
103 KAR 16:190	127	
Amended	761	
Withdrawn		10-18-95
105 KAR 1:140		
Amended	1871	
105 KAR 1:210		
Amended	775	12-7-95
105 KAR 1:215		
Amended	777	12-7-95
106 KAR 1:091		
Amended	606	
As Amended	898	10-11-95
106 KAR 1:131		
Amended	609	
As Amended	900	10-11-95
200 KAR 2:006		
Amended	779	12-7-95
200 KAR 5:021		
Amended	2044	
200 KAR 5:314	1510	
200 KAR 15:010		
Amended	101	
As Amended	715	9-28-95
Amended	1334	2-20-96
200 KAR 17:050		
Amended	104	
As Amended	589	8-24-95
200 KAR 19:010		
Recodified as 803 KAR 30:020		7-24-95
200 KAR 20:010		
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200 KAR 22:020		
As Amended	33	7-6-95
200 KAR 22:030	412	10-13-95
200 KAR 22:040	413	10-13-95
200 KAR 22:050	414	10-13-95
200 KAR 22:060	415	10-13-95
200 KAR 22:070	417	10-13-95
200 KAR 22:080	815	12-7-95
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201 KAR 7:040		
Amended	935	
As Amended	1302	1-8-96
201 KAR 8:220		
Amended	107	8-16-95
201 KAR 8:277		
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201 KAR 12:082		
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201 KAR 16:050		
Amended	936	
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201 KAR 18:129	1173	
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201 KAR 19:035		
Amended	1668	
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201 KAR 20:057		
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201 KAR 20:070		
Amended	1487	
Withdrawn		1-18-96
Amended	1872	
201 KAR 20:162		
Amended	306	9-20-95
201 KAR 20:215		
Amended	1337	
As Amended	1594	3-7-96
201 KAR 20:240		
Amended	109	
Withdrawn		8-16-95
Amended	1338	
As Amended	1595	3-7-96
201 KAR 20:410	418	9-20-95
201 KAR 22:070		
Amended	615	
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201 KAR 30:040		
Amended	1669	
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201 KAR 30:050		
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201 KAR 30:120		
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201 KAR 31:050	998	
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201 KAR 32:010	419	
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201 KAR 32:020	420	
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201 KAR 32:030	421	
As Amended	904	10-19-95
201 KAR 32:040	1911	
201 KAR 32:050	1911	
201 KAR 33:010	999	
As Amended	1304	1-8-96
201 KAR 33:020	999	
As Amended	1304	1-8-96
201 KAR 33:030	1001	
As Amended	1455	2-12-96
201 KAR 33:040	1003	
As Amended	1305	1-8-96
201 KAR 34:010	1913	
202 KAR 3:020	1746	
As Amended	1995	
202 KAR 3:040	1395	
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300 KAR 1:010	635	
As Amended	1828	4-5-96
301 KAR 1:015		
Amended	308	
As Amended	718	10-11-95
301 KAR 1:016		
Amended	1488	
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301 KAR 1:085		
Amended	309	10-11-95
301 KAR 1:201		
Amended	312	10-11-95
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Repealed	695	8-23-95
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Amended	1670	
301 KAR 2:172		
Amended	1874	
301 KAR 2:174		
Amended	1877	
301 KAR 2:178		
Amended	1878	
301 KAR 2:221		
Amended	1673	
301 KAR 2:222		
Amended	1675	
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301 KAR 2:223		
Amended	1679	
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301 KAR 2:224		
Amended	1681	
301 KAR 2:225	1174	2-12-96
301 KAR 2:251		
Amended	1491	4-5-96
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301 KAR 5:010	1177	
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Amended	1683	
301 KAR 6:020		
Amended	1684	
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Repealed	1179	2-12-96
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302 KAR 20:115	1179	2-12-96
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Amended	1339	2-15-96
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302 KAR 100:020	424	10-11-95
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Amended	315	11-14-95
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Amended	318	
Amended	920	11-14-95
401 KAR 42:040		
Amended	321	
Amended	921	11-14-95
401 KAR 42:060		
Amended	323	
Amended	921	11-14-95
401 KAR 42:070		
Amended	327	
Amended	922	11-14-95
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Amended	924	11-14-95
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Amended	331	
Amended	924	11-14-95
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Amended	335	11-14-95
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Amended	337	11-14-95
401 KAR 50:010		
Amended	1686	
Amended	2006	
401 KAR 50:031	817	
Amended	1315	
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Amended	1691	
Amended	2010	
401 KAR 59:001		
Amended	1695	
Amended	2014	
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Recodified as 401 KAR 60:042		10-18-95
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Amended	1703	
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Amended	1707	
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Amended	1343	
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Amended	92	7-12-95
418 KAR 1:020		
Amended	92	7-12-95
418 KAR 1:030		
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418 KAR 1:040		
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500 KAR 6:200		
Amended	2050	
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501 KAR 2:040		
Amended	341	
As Amended	905	11-6-95
501 KAR 2:050		
Amended	342	
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501 KAR 2:060		
Amended	343	
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501 KAR 3:010		
Amended	1346	
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501 KAR 3:020		
Amended	1347	3-7-96
501 KAR 3:050		
Amended	1349	3-7-96
501 KAR 3:060		
Amended	1353	3-7-96
501 KAR 3:100		
Amended	1354	3-7-96
501 KAR 3:140		
Amended	1355	
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501 KAR 6:020		
Amended	616	11-6-95
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Amended	945	1-8-96
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Amended	1495	4-5-96
Amended	1886	
501 KAR 6:050		
Amended	785	12-7-95
501 KAR 6:060		
Amended	1100	2-12-96
Amended	1712	
Amended	1843	
501 KAR 6:080		
Amended	344	10-13-95
501 KAR 6:090		
Amended	946	1-8-96
Amended	1102	2-12-96
501 KAR 6:110		
Amended	948	1-8-96
Amended	1104	2-12-96
501 KAR 6:120		
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Amended	1105	2-12-96
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501 KAR 6:130		
Amended	619	11-6-95
Amended	952	1-8-96
Amended	1107	2-12-96
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