ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on June 3, 1996. See **tentative agenda** beginning on page 2211 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 - June 3, 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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Public Educational Institutions

13 KAR 2:050. Tuition at state-supported institutions of higher education in Kentucky.

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31 KAR 4:030. Reporting forms.

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40 KAR 5:010. Required training.

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200 KAR 5:021 & E. Manual of policies and procedures.

Personnel Pilot Program

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

200 KAR 22:130E. Comprehensive Employment Manual of the Cabinet for Health Services, Department for Health Services, Division for Disability Determinations for use in the Pilot Personnel Program.

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Board of Accountancy

201 KAR 1:160. Quality reviews.

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050E. Fees.

Real Estate Commission

201 KAR 11:400 (& E). Agency disclosure requirements.

Board of Certification of Marriage and Family Therapists

201 KAR 32:040. Compensation of board members. (Deferred from May)

201 KAR 32:050. Code of ethics. (Deferred from May)

Board of Certification for Professional Art Therapists

201 KAR 34:010. Definitions. (Deferred from May)

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

Game

301 KAR 2:140E. Seasons for wild turkey.

JUSTICE CABINET

Juvenile Detention Facilities

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

500 KAR 6:150 (& E). Programs.

500 KAR 6:190 (& E). Waiver of compliance.

500 KAR 6:200 (& E). Physical plant.

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501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:170. Green River Correctional Complex.

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Department of Vehicle Regulation

Driver Improvement

601 KAR 13:090E. Medical Review Board; basis for examination, evaluation, tests.

601 KAR 13:100E. Medical standards for operators of motor vehicles.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Office of District Support Services

School Administration and Finance

702 KAR 3:041. Repeal of 702 KAR 3:040, Check issuing policy.

Pupil Transportation
702 KAR 5:080. Bus drivers' qualifications; responsibilities.

Department of Education

Education Professional Standards Board
704 KAR 20:260. Junior Reserve Training Corps certification. (Public Hearing in April)

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation

Administration
781 KAR 1:040. Rehabilitation technology services.
781 KAR 1:070. Fees for services.

Department for Employment Services

Unemployment Insurance
787 KAR 1:210E. Employer contribution rates.

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803 KAR 2:320 & E. Air contaminants.
803 KAR 2:425 & E. Toxic and hazardous substances.
803 KAR 2:500 & E. Maritime employment.

Department of Workers' Claims
803 KAR 25:010. Procedure for adjustments of claims.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Authorization of Insurers and General Requirements
806 KAR 3:160. Life and health reinsurance agreements. (Amended After Hearing) (Deferred from May)

Kinds of Insurance; Limits of Risk; Reinsurance
806 KAR 5:025. Credit for reinsurance. (Amended After Hearing) (Deferred from May)

Health Insurance Contracts
806 KAR 17:066 & E. Medicare supplement insurance policies.

PUBLIC SERVICE COMMISSION

Utilities
807 KAR 5:026. Gas service; gathering systems.
807 KAR 5:062. Changing primary interexchange carrier; verification procedures. (Public Hearing in April)

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

Heating, Ventilation and Air Conditioning Licensing Requirements
815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements.

Plumbing
815 KAR 20:020. Parts or materials list.

CABINET FOR HEALTH SERVICES

Long-term Care
900 KAR 2:020. Appeals.
900 KAR 2:060. Hearings concerning transfer and discharge rights.

Department for Health Services

Emergency Medical Technicians
902 KAR 13:010. Definitions for 902 KAR Chapter 13.
902 KAR 13:020. Applicant requirements for EMT training and certification.
902 KAR 13:050. Training, examination, certification and recertification of the emergency medical technician.
902 KAR 13:070. EMT-instructors and EMT-instructor trainers.
902 KAR 13:080. Authorized procedures.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance

Public Assistance
904 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability.
904 KAR 2:016 (& E). Standards for need and amount; AFDC.
904 KAR 2:055. Hearings and appeals.
904 KAR 2:116 (& E). Home Energy Assistance Program.

Food Stamp Program

904 KAR 3:042E. Food Stamp Employment and Training Program.
904 KAR 3:060. Administrative disqualification hearings and penalties.
904 KAR 3:070. Fair hearings.

CABINET FOR HEALTH SERVICES

Office of Inspector General

Office of Inspector General

906 KAR 1:060. Nursing pool hearings.
906 KAR 1:080. Standards for utilization review.
906 KAR 1:100. Nurse aide registry, abuse registry and hearing procedures.

Department for Medicaid Services

Medicaid Services

907 KAR 1:060E. Medical transportation. (Deferred from April)
907 KAR 1:061E. Payments for medical transportation. (Deferred from April)
907 KAR 1:140E. Alternative intermediate services for individuals with mental retardation or developmental disabilities.
907 KAR 1:320. Kentucky patient access and care system (KenPAC).
907 KAR 1:560. Medicaid hearings and appeals for recipients.
907 KAR 1:671. Conditions of Medicaid provider participation; withholding overpayments, appeals process, and sanctions.
907 KAR 1:672. Provider enrollment, disclosure, and documentation for Medicaid participation.
907 KAR 1:673. Claims processing.
907 KAR 1:675 (& E). Program integrity.
907 KAR 1:677 (& E). Medicaid recipient lock-in.

Institutional Care

907 KAR 3:005E. Physicians' services.
907 KAR 3:010E. Reimbursement for physicians' services.

Department for Mental Health and Mental Retardation

Substance Abuse

908 KAR 1:340E. Narcotic treatment programs. (Deferred from April) (Agency Requests Deferral)

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 COUNCIL ON HIGHER EDUCATION

Date: May 14, 1996
Kentucky Council on Higher Education

(1) The subject matter of the proposed administrative regulation is an administrative hearing process titled Administrative hearing procedures for a determination of residency status, **13 KAR 2:070**, which is associated with appeals of residency determinations made under 13 KAR 2:045, Determination of residency status for admission and tuition assessment purposes.

(2) The Kentucky Council on Higher Education is charged under KRS 164.020 and 164.030 with the responsibility for determining tuition at and minimum standards for admission to the public higher education institutions. Pursuant to those statutory responsibilities, the Council on Higher Education has promulgated an administrative regulation titled Determination of residency status for admission and tuition assessment purposes. That administrative regulation contains an appeals process which is an adjudicatory proceeding within the meaning of KRS Chapter 13B. The proposed new administrative regulation will provide a framework for those appeals and comply with the requirements of KRS Chapter 13B.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9:30 a.m. in the conference room, Kentucky Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601-8204.

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

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

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

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

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to June 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request, no later than June 7, 1996, to the following address: Kentucky Council on Higher Education; Attn: General Counsel, Dennis L. Taulbee; 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601-8204. 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 Kentucky Council on Higher Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to residency status is KRS 164.020 and 164.030. The authority for the promulgation of an administrative regulation related to administrative hearings is KRS Chapter 13B.

(b) The administrative regulation the council intends to promulgate is a new administrative regulation concerning administrative hearing procedures for a determination of residency status. The new administrative regulation will provide a framework for the appeals process for residency determinations and will comply with the due process requirements of KRS Chapter 13B.

(c) The necessity and function of the proposed administrative regulation is as follows: The passage of the Kentucky Administrative Hearings Act set forth due process requirements for state agencies conducting adjudicatory proceedings which decide the rights of individuals or groups. The administrative regulation, 13 KAR 2:045, Determination of residency status for admission and tuition assessment purposes, provides for a student appeal of an institutional determination of residency status. The Council on Higher Education is the agency responsible for the final determination of that status. The appeal of residency status is an adjudicatory process which decides the rights of an individual student to a status, for admission and tuition assessment purposes, as a Kentucky resident or as a nonresident. In order to conform to the due process requirements of KRS Chapter 13B, it is necessary to develop an administrative regulation which sets forth the procedural safeguards of the appeals process.

(d) The benefits expected from the administrative regulation are: Better procedural protection for students who appeal institutional determinations of residency status and a clear procedural framework for the public higher education institutions and the Council on Higher Education.

(e) This administrative regulation will be implemented by the Council on Higher Education and the eight public higher education institutions.

GENERAL GOVERNMENT CABINET
Kentucky Commission on Human Rights

Date: May 14, 1996
General Government Cabinet
Kentucky Commission on Human Rights

(1) Regulation Number and Title: **104 KAR 1:020**, Administrative proceedings.

(2) The Kentucky Commission on Human Rights 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 Friday, June 28, 1996 at 9 a.m. at The Heyburn Building, 332 West Broadway, 7th Floor, Commission on Human Rights Conference Room, Louisville, Kentucky 40202.

(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 agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of persons at least 20 days prior to June 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: Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, 7th Floor, Louisville, Kentucky 40202.

(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 the request may obtain a request form from the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, 7th Floor, Louisville, Kentucky 40202.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 344.190 and 446.030

(b) The proposed regulation which the Commission on Human Rights intends to promulgate will: Amend provisions to clarify that hearing officers may be persons other than commissioners pursuant to KRS 13B.010(7).

(c) The necessity and function of the proposed administrative regulation are to make this language consistent with the provisions of KRS 344. 210 and 13B.010(7).

(d) The benefit expected from this proposed administrative regulation is a decrease in the time period for scheduled hearings because qualified persons others than commissioners will be allowed to hear cases.

(e) The administrative regulation will be implemented as follows: Upon the effective date of the administrative regulations, persons other than those appointed as Commissioners to the Kentucky Commission on Human Rights may be appointed as hearing officers.

FINANCE AND ADMINISTRATION CABINET

Date: April 26, 1996

Finance and Administration Cabinet

(1) The Finance and Administration Cabinet intends to amend **200 KAR 5:021** to update the Finance and Administration Cabinet's Manual of Policies and Procedures which is incorporated by reference in 200 KAR 5:021.

(2) The Finance and Administration Cabinet 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 11 a.m., EDST, June 28, 1996, at Room 386 of the Capitol Annex, 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 June 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: Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services 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 promulgation of the purchasing manual is KRS 45A.045(2).

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will amend 200 KAR 5:021. It will update the cabinet's Finance and Administration Cabinet's Manual of Policies and Procedures.

(c) The necessity and function of the proposed regulation is that there have been statutory and regulatory changes which require that the manual be updated.

(d) The benefits expected from this regulation are: Allowing the Finance and Administration Cabinet's Manual of Policies and Procedures to accurately reflect statutory and regulatory requirements.

(e) The administrative regulation will be implemented as follows: By making necessary changes in the cabinet's Finance and Administration Cabinet's Manual of Policies and Procedures.

Date: April 26, 1996
Finance and Administration Cabinet

(1) This proposed administrative regulation. **200 KAR 5:025**, relates to use of memoranda of agreement and memoranda of understanding by state agencies.

(2) The Finance and Administration Cabinet 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., EDST, June 28, 1996, at Room 386 of the Capitol Annex, 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 June 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: Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services 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 use of memoranda of agreement and memoranda of understanding by state agencies is KRS 45A.035, 45A.045(2), 45A.050(5).

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will not amend an existing administrative regulation. It will cover the following:

Memoranda of agreement (MOA) shall be defined as an agreement for services rendered to a state agency as defined in KRS 45A.690 (3), and shall include program administration contracts, but shall not apply to purchases of commodities and supplies.

Beginning January 1, 1997, all state agencies shall provide the Finance and Administration Cabinet, Department for Administration, with a report of each active MOA entered into by the agency. The report shall be submitted monthly to the department and shall set out the following information: the name of the party with whom the agency entered the MOA; the type of service to be rendered under the MOA; the cost of the MOA to the agency to date; the projected total cost of the MOA to the agency; and the date the last payment was made under the MOA. The report shall contain information as of the first working day of each month and shall be submitted to the department by the fifth working day of each month. The report shall be in electronic format approved by the department prior to its use by the agency.

Memoranda of understanding (MOU) shall be defined as all contracts or agreements used whenever there is a joint project or undertaking by any state agency and another governmental entity or entities, which may include participation of private entities.

The terms of a MOU shall set out the rights, duties and responsibilities of each entity in relation to the project or undertaking and each other. The term "joint entity or undertaking" shall include capital construction projects. The MOU shall be specific as to the monetary liability of each entity and shall provide provisions for the return of a specific dollar amount of state funds in the event that the project or undertaking is not begun, or other specific prerequisites are not completed by dates certain.

Beginning January 1, 1997, all state agencies shall provide the Secretary of the Finance and Administration Cabinet with a report of each active MOU entered into by an agency. The report shall be submitted monthly to the secretary and shall set out the following information: the name of the party or parties with whom the agency entered the MOU; the duties and responsibilities to be rendered by each party under the MOU; any "flag" dates listed in the MOU by which certain action is to be completed and whether these dates have been met; the cost of the MOU to the agency to date; the projected total cost of the MOU to the agency; and the date the last payment was made under the MOU. The report shall contain information as of the first working day of each month and shall be submitted to the secretary by the fifth working day of each month. The report shall be in electronic format approved by the department prior to its use by the agency.

This administrative regulation shall not replace an agency's responsibility for obtaining all other necessary statutory and regulatory approvals applicable to the MOA or MOU.

(c) The necessity and function of the proposed administrative regulation is as follows: To allow the Finance and Administration Cabinet to track and monitor MOAs and MOUs that state agencies are entering into as a result of their delegations of authority from the Finance and Administration Cabinet.

(d) The benefits expected from the administrative regulation are: Allow the Finance and Administration Cabinet to know the result of their delegation of authority to an agency; enable the Finance and Administration Cabinet to monitory the use of delegation by an agency.

(e) The administrative regulation will be implemented by requiring a state agency to make a monthly report on all MOAs and MOUs used by that agency and to follow the guidelines for use of MOAs and MOUs.

Date: May 13, 1996
Finance and Administration Cabinet
Office of the Secretary
200 KAR 5:302, Delegation of authority.

(1) This proposed administrative regulation related to delegation of authority by the Finance and Administration Cabinet and repeal of 200 KAR 5:301.

(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 9 a.m., EDST, June 28, 1996, at Room 386 of the Capitol Annex, 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 June 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: Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services 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 delegation of authority by the Finance and Administration Cabinet is contained in KRS 45A.035, 45A.045(3), and 45A.050(5).

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will not amend an existing administrative regulation. It will cover the following:

Delegations of authority other than for small purchases.

Delegation by the Finance and Administration Cabinet pursuant to KRS 45A.045(3), other than small purchase delegation, shall be effected by secretary's order. A governmental entity requesting a delegation from the Finance and Administration Cabinet under KRS 45A.045(3), other than small purchase delegation, shall submit, in writing to the secretary, a detailed justification for the delegation, a statement that the entity will comply with all applicable laws, regulations and Finance and Administration Cabinet policies and procedures; and proof of competency in the proposed delegated area. The secretary's order shall specify the authority the entity is receiving, the purpose for which the delegation is given, and the period of time for which the delegation is valid. Any agency receiving such delegation shall comply with the provisions of KRS Chapter 45A and all other purchasing statutes, administrative regulations and policies and procedures of the Finance and Administration Cabinet. Each agency receiving the delegation shall annually certify to the secretary that it is in compliance with all such laws, regulations and policies. This certification shall be filed with the secretary on or before January 1, 1997, and thereafter by July 1 of each year, including July 1, 1997.

Delegation of authority for small purchases.

Delegation by the Finance and Administration Cabinet pursuant to KRS 45A.100 shall be effected by secretary's order.

1. An agency request for small purchase delegation above the limits established in KRS 45A.100 shall be submitted to the secretary, shall be signed by the agency head submitting the request and shall supply the following information:

a. The total dollars spent each of the 2 preceding fiscal years under the agency's existing small purchase authority and the number of small purchase transactions represented by those dollar figures for each fiscal year.

b. A description of the agency's organizational structure which must demonstrate that the placement of the procurement function is appropriate to the agency's size and procurement needs.

c. A description of the agency's internal controls, which are to ensure adequate safeguarding of assets and the segregation and separation of duties, particularly the separation of purchasing, accounting, and receiving functions.

d. Documentation that the agency has prepared and implemented a plan to identify and utilize small and minority owned suppliers for small purchases. The agency's future goals in this respect shall be reported, with a goal of 5% utilization being the minimum. An action plan showing how the agency plans to reach its goals shall be included. The agency shall be prepared to report its progress toward meeting that goal upon request by the secretary.

e. The agency must acknowledge that it is aware of, and in compliance with, the provisions of KRS 45A.500 and 200 KAR 5:330 relating to recycled material content products.

2. The agency must demonstrate that it meets the following minimum criteria to qualify for a higher small purchase delegation:

a. Every record of control weakness or noncompliance relating to procurement practices issued to the agency by the Auditor of Public Accounts, internal auditors, or the Finance Divisions of Purchases or Contracting and Administration, for each of the past 2 fiscal years, must be addressed by implementation of appropriate corrective measures, to the satisfaction of the Secretary of the Finance and Administration Cabinet. A copy of each record of control weakness or noncompliance relating to procurement practices and the agency's response to the findings shall be submitted with the agency's request.

b. The agency's procurement personnel, below the level of branch manager, who will actually be given signature authority to make purchases at the requested higher small purchase limits must have either completed the introductory course in purchasing offered by the National Institute of Governmental Purchasing, an equivalent course offered by the National Association of Purchasing Management, or a course offered by the Finance Divisions of Purchases or Contracting and Administration. The agency's request shall identify the personnel, below the level of branch manager, who will exercise the higher authority and list the professional purchasing certifications or training received by each of those persons.

c. The agency shall utilize each on-line function of the Kentucky Automated Purchasing System that has been offered to the agency by finance purchases. This utilization shall be confirmed by the Division of Purchases.

3. The Divisions of Purchases and Contracting and Administration may perform or request the performance of periodic procurement audits of the various agencies for compliance with the provisions of KRS Chapter 45A, purchasing regulations and the Finance and Administration Cabinet Manual of Policies and Procedures, and, whenever an agency demonstrates deficiencies in procurement expertise or practice, shall recommend that the Secretary revoke or amend any delegations granted under this regulation.

The existing regulation, 200 KAR 5:301, shall be repealed.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide uniformity for all delegations of authority by the Finance and Administration Cabinet, to insure that the agency receiving the authority is competent in the proposed delegated area, and to insure that the agency receiving the authority follows all requirements of KRS Chapter 45A.

(d) The benefits expected from the administrative regulation are: Allow the Finance and Administration Cabinet to insure that an agency requesting a delegation has the capacity to administer the delegation and that the agency will follow all the requirements of KRS Chapter 45A.

(e) The administrative regulation will be implemented by requiring a state agency to follow certain procedures and guidelines when requesting, and when exercising a delegation of authority.

Date: April 26, 1996
Finance and Administration Cabinet

(1) The Finance and Administration Cabinet intends to amend **200 KAR 5:304** to allow a prospective bidder to apply to receive procurement information electronically.

(2) The Finance and Administration Cabinet 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 12 noon, EDST, June 28, 1996, at Room 386 of the Capitol Annex, 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 June 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: Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services 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 electronic access to vendor information is KRS 45A.035 and 45A.055.

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will allow potential bidders on state contracts to receive vendor information electronically.

(c) The necessity and function of the proposed regulation is to facilitate the transfer of information relating to state purchasing in the electronic age.

(d) The benefits expected from this regulation are: Increased numbers of vendors on state contracts which will result in more competitive pricing for the state; and better informed vendors.

(e) The administrative regulation will be implemented as follows: Through the Division of Purchases' Vendor Information Program available via the Internet.

Date: April 26, 1996
Finance and Administration Cabinet

(1) The Finance and Administration Cabinet intends to amend **200 KAR 5:306** to clarify the notice requirements for competitive sealed bids, allow electronic notices and to transmit the bid invitations to vendors in an electronic format.

(2) The Finance and Administration Cabinet 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 2 p.m., EDST, June 28, 1996, at Room 386 of the Capitol Annex, 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 June 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: Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services 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 notice of competitive sealed bidding and electronic transmittal of bid invitations is KRS 45A.035 and 45A.055.

(b) The administrative regulation that the Finance and Administration Cabinet intends to amend will clarify the notice requirements for competitive sealed bidding, allow the cabinet to notify the public electronically of the invitation for bid, and allow the cabinet to electronically transmit the invitation for bid to vendors.

(c) The necessity and function of the proposed regulation is to facilitate the transfer of information relating to state purchasing in the electronic age.

(d) The benefits expected from this regulation are: Increased numbers of vendors on state contracts which will result in more competitive pricing for the state; and better informed vendors.

(e) The administrative regulation will be implemented as follows: Through the Division of Purchases' Vendor Information Program available via the Internet.

Date: April 26, 1996
Finance and Administration Cabinet

(1) The Finance and Administration Cabinet intends to promulgate **200 KAR 5:325** to provide for consideration of Kentucky-made wood products when state agencies purchase products.

(2) The Finance and Administration Cabinet 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 1 p.m., EDST, June 28, 1996, at Room 386 of the Capitol Annex, 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 June 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: Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services 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 requiring consideration of Kentucky manufactured wood products by state agencies when writing purchasing specifications and when purchasing items is KRS 45A.045(2) and 45A.035.

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will insure that Kentucky made wood products are considered by an agency purchasing applicable goods.

(c) The necessity and function of the proposed regulation is that the historical purchasing practices of the various state agencies do not provide for consideration of Kentucky made wood products.

(d) The benefits expected from this regulation are: More Kentucky made wood products will be considered by purchasing agencies.

(e) The administrative regulation will be implemented as follows: By requiring agencies to consider Kentucky wood products when writing their specifications and purchasing products.

Office of Financial Management and Economic Analysis

Date: May 13, 1996
Finance and Administration Cabinet
Office of Financial Management and Economic Analysis

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

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

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for June 27, 1996, at 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 27, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail a written request to the following address: Kim Blitch, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

(b) On a request for 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 Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed amendment.

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

103.286.

(b) The proposed amendment to 200 KAR 15:010 will require local projects submitting a Notice of Intent to the Kentucky Private Activity Bond Allocation Committee to provide additional information concerning the project for which they are requesting private activity bond cap from the Commonwealth so that the committee may allocate cap more effectively. The following amendments to the regulation are proposed.

1. Section 4 will be amended to add a sixth criteria to identify previous state cap awarded to the applicant.
2. Section 4 number 5 will be amended to identify previous state incentives awarded to the applicant.
3. The Notice of Intent incorporated by reference will be amended to include:

a. The addition of a question allowing the committee the right to question applicants regarding the filed Notice of Intent;

b. Number 5 will be amended to require the applicant to provide the number of jobs to be created by the end of two full years in operation;

c. Number 5 will be amended to require the applicant to provide the number of full time jobs which would be lost if the project does not receive private activity bond cap;

d. Number 6 will be amended to require the applicant to include fringe benefits in the average annual salary reported;

e. Number 7 will be amended to require the applicant to provide a more detailed summary of previous state incentives awarded to it in the last five years;

f. The addition of a question requesting the applicant to provide the amount of cap previously awarded to it, if any.

(c) The necessity and function of the proposed amendment is as follows: This proposed administrative regulation will establish a more efficient and equitable process for the allocation of private activity bonds.

(d) The benefits expected from the proposed amendment are: The proposed amendment will allow the allocation of private activity bonds in a manner which will best achieve the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth.

(e) This amended administrative regulation will be implemented as follows: All state bond counsel firms and state agencies which have expressed an interest in Kentucky Private Activity Bond Volume Cap will be provided with the revised procedures to the application process.

KENTUCKY STATE BOARD OF ACCOUNTANCY

Date: May 1, 1996
Kentucky State Board of Accountancy

(1) **201 KAR 1:040**, Procedures for conducting examination.

(2) The Kentucky State Board of Accountancy intends to amend the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 1996, at 9 a.m., at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

(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, are not received from the required number of people at least 20 days prior to June 27, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to procedures for conducting the examination is KRS 325.240.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:040, Procedures for conducting examination by prohibiting disclosure of any information concerning examination questions or content, and falsifying or misrepresenting educational credentials required for admittance to the exam. Penalties for engaging in such conduct will include prohibiting the release of grades to the candidate.

(c) The necessity and function of the proposed administrative regulation is as follows: To update the standards of administration of the Uniform Certified Public Accountant Examination as required by the agency that creates and grades the exam.

(d) The benefits expected from administrative regulation are: Reduce the number of new questions that must be created for each exam since the question booklets will not be given to the exam candidates after completion of the exam.

(e) The administrative regulation will be implemented as follows: The examination candidates will not be allowed to take home the examination booklets following completion of the exam.

KENTUCKY BOARD OF DENTISTRY

Date: May 15, 1996
Kentucky Board of Dentistry

(1) **201 KAR 8:430**, Unprofessional conduct. This proposed administrative regulation establishes definitions of unprofessional conduct for which disciplinary action may be taken against a licensee by the Board of Dentistry.

(2) The Kentucky Board of Dentistry 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 June 28, 1996, at 1:30 p.m., in the Kentucky Board of Dentistry Office, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223.

(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 June 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: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573; Fax: (502) 423-1239.

(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 Gary Munsie at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the definition of unprofessional conduct is KRS 313.140.

(b) The administrative regulation the Kentucky Board of Dentistry intends to promulgate is 201 KAR 8:010. It will allow the board to discipline licensees who engage in unprofessional conduct for acts not clearly defined by statute.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will further establish definitions of unprofessional conduct for which disciplinary action may be taken against a licensee.

(d) The benefit expected from this administrative regulation is the clarification and addition of the acts constituting unprofessional conduct.

(e) The regulation will be implemented by the Executive Director and Executive Secretary of the Board of Dentistry in accordance with KRS 313.140.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy

Date: May 8, 1996
General Government Cabinet
Board of Physical Therapy

(1) Regulation number and title: **201 KAR 22:031**, Therapist's licensing procedure.

(2) The Board of Physical Therapy 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 June 28, 1996 at 9 a.m., at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(4)(a) The public hearing will beheld if it is requested, in writing, by a 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 June 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: Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Board of Physical Therapy 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 therapist's licensing procedures are KRS 327.050(1), 327.060, and 327.080.

(b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:031, as follows: Section 1(2) will be amended to decrease the administrative fee for the reexamination applicant from 25 to 10 dollars, and the remaining amendments provide for computer based testing versus board administered testing.

(c) The necessity and function of the proposed administrative regulation is to accommodate candidates taking the national licensure examination by computer.

(d) The benefits expected from this administrative regulation are that qualified candidates may sit for the licensure examination 6 days a week versus only 3 times a year on national examination dates, requiring a person to sit within 60 days of completing application requirements.

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

Date: May 8, 1996
General Government Cabinet
Board of Physical Therapy

(1) Regulation number and title: **201 KAR 22:106**, Assistant's certification procedure.

(2) The Board of Physical Therapy 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 June 28, 1996 at 9 a.m., at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(4)(a) The public hearing will beheld if it is requested, in writing, by a 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 June 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: Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Board of Physical Therapy 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 assistant's certification procedure is KRS 327.040(12).

(b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:106, as follows: Section 3(3) will be amended to decrease the administrative fee for the reexamination applicant from 25 to 10 dollars, and the remaining amendments provide for computer based testing versus board administered testing.

(c) The necessity and function of the proposed administrative regulation is to accommodate candidates taking the national licensure examination by computer.

(d) The benefits expected from this administrative regulation are that qualified candidates may sit for the licensure examination 6 days a week versus only 3 times a year on national examination dates, requiring a person to sit within 60 days of completing application requirements.

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

Date: May 8, 1996
General Government Cabinet
Board of Physical Therapy

(1) Regulation number and title: **201 KAR 22:135**, Fees.

(2) The Board of Physical Therapy 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 June 28, 1996 at 9 a.m., at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(4)(a) The public hearing will beheld if it is requested, in writing, by a 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 June 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: Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Board of Physical Therapy 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 fees is KRS 327.040(12), 327.050(2), 327.050(8), and 327.075(1).

(b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:135, as follows:

a. Section 2(1) will be amended to increase the biennial license renewal and reinstatement fee by 20 dollars.

b. Increase the examination and reexamination fee for the physical therapist by sixty dollars, and physical therapist's assistant by 45 dollars, and

3. Decrease the administrative fee associated with reexamination by 15 dollars to 10 dollars.

(c) The necessity and function of the proposed administrative regulation is:

1. To increase the biennial renewal and reinstatement fees to provide the board the revenue to meet increased expenses;

2. To increase the examination and reexamination fee to cover the cost of changing to computer based testing; and

3. Decrease the administrative fee for persons being reexamined to more accurately reflect the board's cost.

(d) The benefits expected from this administrative regulation are that:

1. Increased renewal income will provide revenue to pay for unpredictable services and to expanded computer capabilities; and

2. Changing to computer based testing will increase public protection by providing the examination by computer 6 days a week versus 3 times a year, allowing a person to sit within 60 days of completing application requirements.

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

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

Date: May 14, 1996
Tourism Development Cabinet
Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:176**, Deer control tags.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to June 28, 1996 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing deer damage control is KRS 150.105.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will repeal and replace 301 KAR 2:211. Substantive changes from 301 KAR 2:211 will clarify who is eligible for deer control tags, make farms with damage only to deer food plots ineligible for damage control tags; and define habitat damage.

(c) The necessity and function of the proposed administrative regulation is to prescribe the conditions and procedures under which deer may be taken to alleviate localized agricultural and wildlife habitat damage until it is appropriate to apply deer herd stabilization or reduction on a county-wide basis.

(d) The benefits expected from the administrative regulation are reduced damage from deer to agricultural crops and natural habitats.

(e) The administrative regulation will be implemented as follows: Representatives from the department will visit lands reporting deer damage and determine the number of deer control tags to be issued.

JUSTICE CABINET
Division of Charitable Gaming

Date: May 14, 1996
Justice Cabinet
Division of Charitable Gaming
500 KAR 11:001, Definitions.

(1) The subject matter of this administrative regulation is definitions describing terms found in Title 500 KAR, Chapter 11 not otherwise defined in KRS 238.505.

(2) The Division of Charitable Gaming intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, June 28, 1996, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any

disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(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 Friday, June 28, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, (502)564-5528.

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(9).

(b) This administrative regulation will amend 500 KAR 11:001. It will establish additional definitions for terms found in Title 500, Chapter 11 not otherwise defined in KRS 238.505.

(c) The necessity and function of this administrative regulation is as follows: This administrative regulation establishes definitions of terms used throughout Title 500 KAR, Chapter 11 which have not been previously defined or otherwise defined in KRS 238.505.

(d) The benefits expected from the administrative regulation are: This administrative regulation establishes definitions of terms used throughout Title 500 KAR, Chapter 11 not otherwise defined in KRS 238.505. The definitions will promote greater understanding of the regulations.

(e) The administrative regulation will be implemented as follows: These definitions will be applicable to those regulations, ordinary and emergency, currently in effect, and division staff will be informed of this regulation.

Date: May 14, 1996
Justice Cabinet
Division of Charitable Gaming

500 KAR 11:030, Charity game ticket standards.

(1) The subject matter of this administrative regulation is to establish procedures for the approval and use of automated charity game ticket dispensers and to provide that charity game tickets shall not be sold for a price other than stated on the charity game ticket or accompanying flare.

(2) The Division of Charitable Gaming intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, June 28, 1996, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(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 Friday, June 28, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, (502)564-5528.

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(1) and (2), 238.545(1) and (2).

(b) This administrative regulation will amend an existing administrative regulation. The proposed regulation will provide that charity game tickets shall not be sold to the public at a price different than stated on the charity game ticket or accompanying flare and will establish procedures for approval and use of automated charity game ticket dispensers.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is required to promulgate administrative regulations relating to the use and control of automated charity game tickets. In addition, the Division of Charitable Gaming wants to clarify that charity game tickets must be sold to the public at the price stated on the ticket or the accompanying flare.

(d) The benefits expected from the administrative regulation are: The regulation will govern the approval and use of automated charity game ticket dispensers to ensure fairness and uniformity of operation. In addition, by clarifying that charity game tickets must be sold at the price stated on the ticket, the division will be better able to track proper receipts for such tickets.

(e) The administrative regulation will be implemented as follows: The division director will approve any request to use an automated charity game ticket dispenser, and the division's inspectors will be utilized to ensure compliance.

Date: May 14, 1996
Justice Cabinet
Division of Charitable Gaming
500 KAR 11:110, Keno.

(1) The subject matter of this administrative regulation is to establish the standards for the conduct of Keno, a "special limited charitable game".

(2) The Division of Charitable Gaming intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, June 28, 1996, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(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 Friday, June 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, (502)564-5528.

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.505(17), 238.515(2) and (9).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish standards for the conduct of Keno.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to establish circumstances under which "special limited charitable games" will be conducted. This regulation establishes standards for the conduct of Keno, establishes reporting requirements, and establishes standards for the use of Keno equipment.

(d) The benefits expected from the administrative regulation are: It is expected that this regulation will provide a framework for the conduct of Keno which provides for the integrity of the game and for protection of both the charitable organization and the public.

(e) The administrative regulation will be implemented as follows: Division of Charitable Gaming staff will be informed of the regulation, and the division's inspectors shall be utilized to ensure that these regulations are followed.

Date: May 14, 1996
Justice Cabinet
Division of Charitable Gaming
500 KAR 11:120, Other allowable expenses.

(1) The subject matter of this administrative regulation is the establishment of expenses by the Division of Charitable Gaming which are determined to be legitimate but which have not already been provided for by statute.

(2) The Division of Charitable Gaming intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, June 28, 1996, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(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 Friday, June 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, (502)564-5528.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.550(4).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish certain expenses not currently allowed under KRS Chapter 238.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to approve expenses determined to be legitimate but which have not already been provided for by statute. This regulation establishes such expenses.

(d) The benefits expected from the administrative regulation are: This regulation will clarify which expenses may be incurred by licensed charitable organizations in addition to those expenses permitted by statute.

(e) The administrative regulation will be implemented as follows: The division's accounting/auditing staff will review quarterly reports submitted by licensed charitable organizations to ensure compliance with this regulation.

JUSTICE CABINET
Department of Corrections

Date: May 14, 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 advanced 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 June 28, 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 June 28, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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. Advanced supervision (27-10-01) policy to be deleted.

(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: May 13, 1996
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:170**, Green River Correctional Complex: Public information and media communication; sex offender register; continuity of care: health evaluations, intra-system transfer, individual treatment plan; mental health services; transfers/medical profiles; informed consent; infirmary care; inmate photo project; parole hearing procedure.

(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 June 28, 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 June 28, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. Public information and media communication (01-12-01) shall be established to outline the guidelines for providing information and for media communication at the Green River Correctional Complex.

2. Sex offender register (06-03-01) shall be established to outline the guidelines for a sex offender register at the Green River Correctional Complex.

3. Continuity of care: health evaluations, intra-system transfer, individual treatment plans (13-02-03) shall be established to outline the guidelines for continuity of care including health evaluations, intrasystem transfers, individual treatment plans for inmates of the Green River Correctional Complex.

4. Mental health services (13-06-01) shall be established to outline the guidelines for providing mental health services for inmates at the Green River Correctional Complex.

5. Transfers/medical profiles (13-10-01) shall be established to outline the guidelines for the medical profiles pertaining to transferred inmates from the Green River Correctional Complex.

6. Informed consent (13-11-01) shall be established to outline the guidelines for the definition of informed consent for inmates at the Green River Correctional Complex.

7. Infirmary care (13-12-01) shall be established to provide the guidelines for infirmary care for inmates at the Green River Correctional Complex.

8. Inmate photo project (22-05-01) shall be established to outline the guidelines for the inmate photo project at the Green River Correctional Complex.

9. Parole hearing procedure (25-02-01) shall be established to provide guidelines for parole hearing procedures for inmates at the Green River Correctional Complex.

10. 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 Green River Correctional Complex to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: To comply with 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.

KENTUCKY JUSTICE CABINET
Department of Criminal Justice Training

Date: 15 May 1996
Kentucky Justice Cabinet
Department of Criminal Justice Training

(1) Regulation Number and Title: Concealed deadly weapons: **503 KAR 4:010, 503 KAR 4:020, 503 KAR 4:030, 503 KAR 4:040, 503 KAR 4:050, 503 KAR 4:060,** and **503 KAR 4:070.**

(2) The Department of Criminal Justice Training 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 June 27,

1996 at 10 a.m. at Funderburk Building, Eastern Kentucky University, Richmond, Kentucky.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to June 27, 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 Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations governing training firearms instructors is HB 40, passed by the 1996 General Assembly and signed by the Governor. This act mandates that uniform administrative regulations be promulgated "concerning the certification and decertification of all firearms instructors practicing in the Commonwealth of Kentucky."

(b) The administrative regulations that the department intends to promulgate will not amend an existing administrative regulation. They will establish the content of training courses for firearms instructors, including the content and conduct of the courses they teach to qualify applicants for permits to carry concealed deadly weapons. They will also specify the circumstances under which instructor certification can be revoked and the process for appealing revocation of certification.

(c) The necessity and function of the proposed administrative regulations is to establish qualifications and standards for the persons who will teach the firearms training course which is a prerequisite to receiving a permit to carry a concealed deadly weapon. These administrative regulations are necessary to assure that firearms training courses are taught in a consistent and uniform manner by qualified instructors.

(d) The benefits expected from the administrative regulations are the establishment and maintenance of trained and qualified firearms instructors teaching high-quality firearms training courses.

(e) The administrative regulations will be implemented as follows: Regular administrative regulations.

TRANSPORTATION CABINET

Date: May 15, 1996

Transportation Cabinet

(1) **600 KAR 4:020**, The Disadvantaged, Minority, and Women Business Enterprise Program.

(2) The Kentucky Transportation Cabinet intends to amend the administrative regulation governing the Disadvantaged, Minority, and Women Business Enterprise Program as it relates to U.S. Department of Transportation funding recipients.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 1996 at 2 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 June 27, 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 13A.120, 174.080, and 49 CFR Part 23.

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

(c) The necessity and function of 600 KAR 4:020 reads as follows: "Title 49 of the Code of Federal Regulations, Part 23 requires that most recipients of funds from the U.S. Department of Transportation (USDOT) implement a program of supporting the fullest possible participation of firms owned and controlled by minorities, women, and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet, as a recipient of USDOT funds, is required by the federal regulation to have a program that requires the participation of Disadvantaged, Minority, and Women Business Enterprises in contracts financed in whole or in part with federal funds. This administrative regulation establishes the procedures to be followed by and requirements of contractors and subcontractors dealing with the Transportation Cabinet. This proposed amendment is being considered at the request of the Federal Highway Administration. They requested that when a Disadvantaged Business Enterprise certified firm is the successful low bidder on a project which includes a contract goal for DBE firms, the DBE has to use other DBE subcontractors to meet the subcontract goal. The Federal Highway Administration believes a DBE prime contractor should experience the entire spectrum of contracting and therefore be required to meet the same requirements as a non-DBE prime contractor."

(d) The benefit expected from this administrative regulation change is that by treating all prime contractors the same, DBE prime

contractors would gain valuable experience in subcontracting. Further, it would increase the work available to other DBE contractors.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by June 12, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: May 15, 1996
Transportation Cabinet

(1) **601 KAR 1:025**, Transportation of hazardous materials by air or highway.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the transportation of hazardous materials within Kentucky. The administrative regulation will adopt the latest changes to the federal hazardous materials regulations that have been published in the "Federal Register".

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 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 June 27, 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 174.410(2), 174.430(1), 49 CFR Parts 130, 171-180.

(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 174.410(2) provides that the Secretary of the Transportation Cabinet in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of Cabinet for Health Services (formerly Cabinet for Human Resources), shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435 relating to the transportation of hazardous material by air or highway. Further, the U.S. Department of Transportation requires that each state enforce the federal requirements. This administrative regulation adopts the federal regulations relating to the transportation of hazardous materials.

(d) The benefit expected from this administrative regulation is consistency with the federal requirements for the transportation of hazardous materials.

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

Date: May 15, 1996
Transportation Cabinet

(1) **601 KAR 1:101**, Proof of liability and cargo insurance.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation amending the proof of liability and cargo insurance law as it relates to motor carriers operating in Kentucky.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 1996 at 1 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 June 27, 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 281.600, 49 CFR Parts 387, 1023, 1043.

(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: To establish a system of insurance filings for all motor carriers operating in intrastate commerce or which have been registered in Kentucky pursuant to the provisions of 49 CFR Part 1023.

(d) The benefits expected from this administrative regulation are update of the federal regulations which govern the material in this

administrative regulation.

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

Date: May 15, 1996
Transportation Cabinet

(1) **601 KAR 1:115**, Taxi cabs.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation relating to the operation of taxi cabs both in the city and county.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9 a.m. local prevailing time, at 275 East Main Street, 1st Floor, Department for Health Services Auditorium, Health Services Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 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: 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 281.600 and HB 492 as enacted by the 1996 General Assembly.

(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: Clarification of the operating authority and the information which must be supplied to the Transportation Cabinet by operators of taxi cabs for hire whether with a base in the city or county.

(d) The benefits expected from this administrative regulation is the implementation of HB 492 as 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 June 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: May 15, 1996
Transportation Cabinet

(1) **601 KAR 1:117**, ADA-equipped vehicles used to transport persons with disabilities for hire.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation relating to the operating authority of motor carriers which operate ADA-equipped vehicles for the transportation of persons with disabilities for hire.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9 a.m. local prevailing time, at 275 East Main Street, 1st Floor, Department for Health Services Auditorium, Health Services Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 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: 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 492 as enacted by the 1996 General Assembly.

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

(c) The necessity and function of the proposed administrative regulation is as follows: Detail the procedure for obtaining operating authority from the Transportation Cabinet and the information which must be supplied to the Transportation Cabinet by an operator of an ADA-equipped vehicle transporting persons with disabilities for hire.

(d) The benefits expected from this administrative regulation is the implementation of HB 492 as 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 June 15, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

Date: May 15, 1996
Transportation Cabinet

(1) **603 KAR 4:045**, Supplemental guide signs.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the eligibility requirements for supplemental guide signs to be placed on state-owned right of way. This administrative regulation will include at least the following types of signage:

* Placement of large brown panels on limited access highways - attraction must meet visitation formula to be eligible.
* Placement of small brown signs on limited access highways - attractions not eligible for signs if 5th legend logo is available. If 5th legend logo not available, attractions must meet lesser visitation requirements.
* Placement of brown signs on highways which are not limited access - no new to be erected - attractions to participate in Tourist Oriented Directional Signs (TODS) Program in 603 KAR 4:040.
* Limited erection of signs for other destinations such as parks, trails, recreational areas, universities, historic districts, etc.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 1996 at 3 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 June 27, 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 189.337 and 23 CFR Part 655, Subpart F.

(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 189.337(2) requires the Transportation Cabinet's Department of Highways to adopt a uniform system of traffic control devices. "The Federal Highway Administration, through federal regulation 23 CFR Part 655, requires the traffic control devices on all public highways or streets be in substantial conformance with the manual on uniform traffic control devices." In the manual on uniform traffic control devices, it specifies the number of supplemental guide signs which may be erected near each intersection and further mandates each state adopt policies establishing under what circumstances supplemental guide signs may be erected. This administrative regulation is promulgated to establish the criteria for erection of a supplemental guide sign.

(d) The benefits expected from this administrative regulation are public notice and uniformity in administration of the requirements of the erection of supplemental guide signs on highways in Kentucky. It must be noted these signs are of tremendous interest to the tourism industry as well as providing benefit to the traveling public. It must be further noted that the erection of too many signs adversely effects highway safety and the "Manual on Uniform Traffic Control Devices" strongly encourages limitation of the use of supplemental signs.

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

Date: May 15, 1996
Transportation Cabinet

(1) **603 KAR 7:020**, Nonurbanized Public Transportation Program and Elderly and Handicapped Program.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations relating to the implementation of 49 USC, Chapter 53 in Kentucky.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9 a.m. local prevailing time, at 275 East Main Street, 1st Floor, Department for Health Services Auditorium, Health Services Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 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: 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 49 USC 5310, et. seq. and 49 CFR.

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

(c) The necessity and function of the proposed administrative regulation is as follows: The Nonurbanized Public Transportation Program is authorized and governed by Section 5311 of the federal transit laws (49 USC, Chapter 53) as amended. The Elderly and Persons With Disabilities Public Transportation Program is authorized and governed by Section 5310 of the same Act. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth and any of its agencies and from federal agency appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this administrative regulation is to implement the procedures required to administer the Nonurbanized Public Transportation Program and the Elderly and Persons With Disabilities Public Transportation Program in accordance with federal requirements.

(d) The benefits expected from this administrative regulation is an update of the stated requirements for obtaining funds in order to remain consistent with the federal requirements.

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

DEPARTMENT OF EDUCATION
Office of District Support Services

Date: May 14, 1996
Department of Education
Office of District Support Services

(1) **702 KAR 3:285**. School district Medicaid providers. This proposed administrative regulation is necessary to implement KRS 605.115.

(2) The Kentucky Board of Education 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 Friday, June 28, 1996, 10 a.m., at the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be cancelled.

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

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

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

1. "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 Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an existing administrative regulation relating to school district's as Medicaid providers is KRS 156.160 and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is a new administration regulation. It will provide an administrative regulation which is necessary to implement KRS 605.115.

(c) The necessity and function of the proposed administrative regulation is to implement KRS 605.115.

(d) The benefits expected from this proposed administrative regulation are to provide health-related services to Medicaid eligible students with disabilities as required by the student's Individual Education Program (IEP) and to provide for reimbursement to local school districts for these services.

EDUCATION PROFESSIONAL STANDARDS BOARD

Date: April 1996
Education Professional Standards Board

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 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 before June 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: Dr. Betty Lindsey, Education Professional Standards Board, 1024 Capital Center Dr., 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 want to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:670. This regulation was initially adopted in 1994.

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

(d) The benefits expected from the administrative regulation are: Timely advice to institutions of higher education in order that programs leading to new certificates may be implemented and students appropriately advised, amendment of provisions for the use of assessments to comply with legal requirements, and specification of an expectation for new teachers regarding competency in content of the area of the certificate.

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

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Date: May 15, 1996

Kentucky Occupational Safety and Health Review Commission

(1) **803 KAR 50:010**. Hearings; procedure; disposition. Section 15(1) and (4).

(2) The Kentucky Occupational Safety and Health Review Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 1 p.m., at the offices of the KOSH Review Commission, #4 Millcreek Park, Route #3, Millville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: KOSH Review Commission, #4 Millcreek Park, Route #3, Millville Road, 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 KOSH Review Commission at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 338.071 and 338.081.

(b) The administrative regulation that the KOSH Review Commission intends to promulgate will amend 803 KAR 50:010, Hearings; procedure; disposition. It will amend Section 15 to adopt federal language allowing full participation in KOSH Review Commission hearings and proceedings by all parties and intervenors without regard to representation by an attorney.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Occupational Safety and Health Review Commission is authorized by KRS 338.071 and 338.081 to hear and rule on appeals from citations, notifications, and variances and adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings. This administrative regulation is to provide for these hearings and their proper disposition.

(d) The benefits expected from administrative regulation are: Full access to the due process of law provided by KRS 338.071 and 338.081 will be afforded to all parties and intervenors, without requirement for an attorney.

(e) The administrative regulation will be implemented as follows: Assistant Attorneys General acting as KOSH hearing officers will cease to require that any party or intervenor appearing in proceedings before the Kentucky Occupational Safety and Health Review Commission engage the services of a licensed attorney.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals

Date: May 14, 1996
Public Protection and Regulation Cabinet
Department of Mines and Minerals

(1) Regulation Number and Title: **805 KAR 5:010**, Fees for licenses to mine.

(2) The Public Protection and Regulation Cabinet, Department of Mines and Minerals intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment of the administrative regulation has been scheduled for Thursday, June 27, 1996, at 10 a.m., prevailing local time, in the First Floor Conference Room of the Department of Mines and Minerals, 3572 Iron Works Pike, Lexington, Kentucky 40511.

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

(b) If 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 June 27, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, Attn: Eugene D. Attkisson.

(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 may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to mine license fees is KRS 351.175.

(b) The administrative regulation that the cabinet intends to promulgate will amend 805 KAR 5:010, as follows: Sections 2 and 3 will be amended to create a uniform basis for the setting of license fee amounts for both surface and underground mines. Those amounts shall be established at a minimum of $300 for new mines, and at $300, plus $100 for each 100,000 tons or part thereof mined in the immediately previous year, for those mines which were licensed in immediately previous years.

(c) The necessity and function of the proposed administrative regulation is: The promulgating agency believes that the difference which has existed in the manner in which license fees have been established for surface and underground mines should be eliminated, and that all such fees, in addition to a minimum fee, should be established upon a basis - i.e., tonnage, if any, previously mined - which is uniformly applied to both surface and underground mines.

(d) The benefits expected from the amended administrative regulation are: The benefit to be achieved in implementing the proposed amendment will be the elimination of the artificial distinction which has been applied to the establishment of license fees payable by surface and underground mines.

(e) The administrative regulation will be implemented as follows: The license fees whose amounts are proposed for amendment will be imposed upon all licensees upon the effective date of the amendment of the administrative regulation.

Date: May 14, 1996
Cabinet for Public Protection and Regulation
Department of Mines and Minerals

805 KAR 7:080, Training, certification, and annual retraining of mine emergency technicians.

(1) The subject matter of the proposed administrative regulation is the establishment of training, certification, and annual retraining requirements for mine emergency technicians.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, June 27, 1996, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky.

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

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

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 June 27, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Mines and Minerals, P.O. Box 14080, Lexington, Kentucky 40512-4080. Agency contact: Eugene D. Attkisson - (606) 246-2026.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authorities for the promulgation of an administrative regulation relating to the establishment of training, certification, and annual retraining requirements for mine emergency technicians are KRS 351.070(13) and 351.127(1) and (5).

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will not amend an existing regulation. It will create the training, certification and annual retraining requirements for mine emergency technicians.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 351.127 requires that a certified emergency medical technician or mine emergency technician be employed at every coal mine whose employees are engaged in the extraction, production, or preparation of coal. Persons employed as mine emergency technicians shall be trained, certified, and retrained in accordance with standards established in this proposed administrative regulation. Certified emergency medical technicians and mine emergency technicians shall receive annual retraining in the manner established by this proposed administrative regulation.

(d) The benefits expected from the promulgation of this administrative regulation are:

1. The training, certification, and annual retraining requirements for mine emergency technicians shall be established and made readily available to the coal mining industry;

2. The coal mining industry shall have the option of employing a mine emergency technician or an emergency medical technician to satisfy the requirements of KRS 351.127.

3. The department's training curriculum for mine emergency technicians shall focus on mine-related medical emergencies, as opposed to the more general curriculum applied in the training of emergency medical technicians.

4. The capabilities of a coal mine to provide immediate emergency medical care and intervention to stabilize a victim's condition at the mine site shall be significantly improved.

5. Voluntary compliance with KRS 351.127 shall be enhanced, by creating the option of a coal mine licensee's hiring either an emergency medical technician or a mine emergency technician.

(e) The administrative regulation shall be implemented as follows: Effective January 1, 1997, KRS 351.127 requires that a certified emergency medical technician or mine emergency technician be employed at every coal mine whose employees are engaged in the extraction, production, or preparation of coal. The Department of Mines and Minerals, along with other persons authorized to do so, shall provide training and annual retraining for persons to satisfy the requirements for certification as mine emergency technicians and mine emergency technician instructors. The Department of Mines and Minerals shall develop the mine emergency technician curriculum to be used by the mine emergency technician instructors.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Date: May 14, 1996
Public Protection and Regulation Cabinet
Department of Insurance

(1) **806 KAR 46:030**, Reasonable time for violation of KRS Chapter 304 Subtitle 48 and administrative regulations to be corrected.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 10 a.m., at the Kentucky Department of Insurance, 215 West Main Street, 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 June 28, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

(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 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 304.48-220(1)(e) and 304.48-230.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will set forth a specific time period of thirty (30) days for a liability self-insurance group to correct a violation of KRS Chapter 304 Subtitle 48 and administrative regulations.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 304.48-220(1)(e), the commissioner may suspend or revoke a liability self-insurance groups' certificate of filing if the group fails to correct a violation of KRS Chapter 304 Subtitle 48 or administrative regulations within a reasonable time period. This reasonable time period is to be established by the commissioner in an administrative regulation pursuant to KRS 304.48-220(1)(e).

(d) The benefits expected from the administrative regulation are: It will set the specific time period of thirty (30) days as required by KRS 304.48-220(1)(e). It will also allow for extensions for good cause. A liability self-insurance group will know to correct violations within thirty

(30) days and how to request additional time to avoid a suspension or revocation of its certificate of filing.

(e) The administrative regulation will be implemented as follows: If liability self-insurance groups have violated KRS Chapter 304 Subtitle 48 or related administrative regulation, the commissioner will give the group a specific time period to correct the violation. If the group fails to make the correction within the reasonable time period, the commissioner may suspend or revoke its certificate of filing.

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

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

(1) Regulation Number and Title: **815 KAR 20:050** - Installation permits.

(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, June 27, 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 June 27, 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 318.030 and 318.134.

(b) The department intends to amend 815 KAR 20:050, Installation permits, to comply with the requirements of Senate Bill 242 enacted by the 1996 General Assembly to include "medical gas piping" in the definition of "plumbing."

(c) The necessity and function of the proposed administrative regulation is as follows: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This administrative regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state.

(d) The benefits expected from this administrative regulation are: To assure safety compliance with applicable codes.

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

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

(1) Regulation Number and Title: **815 KAR 20:150**, Inspection and tests.

(2) The Department of Housing, Buildings and Construction (Division of Plumbing) 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, June 27, 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 June 27, 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 198B.040(1) and 318.130.

(b) The department intends to amend 815 KAR 20:150, Inspection and tests, to comply with the requirements of Senate Bill 242 enacted by the 1996 General Assembly to include "medical gas piping" in the definition of "plumbing."

(c) The necessity and function of the proposed administrative regulation is as follows: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to tests and inspections that are necessary in order to cause compliance with other administrative regulations of this code.

(d) The benefits expected from this administrative regulation are: To assure safety in compliance with applicable codes.

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

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

(1) Regulation Number and Title: **815 KAR 25:010**, Manufactured homes.

(2) The Mobile Home Certification and Licensure Board 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, June 27, 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 June 27, 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 227.570 and 227.590.

(b) The board intends to amend 815 KAR 25:010, Manufactured homes, to comply with requirements of House Bill 477 enacted by the 1996 General Assembly which will clarify the relationship between manufactured housing and building codes and amend various sections to conform to the federal act.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to conform to intent of House Bill 477.

(d) The benefits expected from this administrative regulation are: To assure safety in compliance with applicable standards.

(e) This administrative regulation will be implemented by the Manufactured Housing Section of the State Fire Marshal's Office and its inspectors.

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

(1) Regulation Number and Title: **815 KAR 25:020**, Recreational vehicles.

(2) The Recreational Vehicle Certification and Licensure Board 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, June 27, 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 June 27, 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 227.570, 227.590 and 227.610.

(b) The board intends to amend 815 KAR 25:020, Recreational vehicles, to comply with requirements of House Bill 477 enacted by the 1996 General Assembly which will clarify the relationship between recreational vehicles and applicable standards.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is needed to conform to House Bill 477.

(d) The benefits expected from this administrative regulation are: To assure safety in compliance with applicable standards.

(e) This administrative regulation will be implemented by the Manufactured Housing Section of the State Fire Marshal's Office and its inspectors.

CABINET FOR HEALTH SERVICES
Department for Health Services
Commissioner's Office

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Commissioner's Office

(1) **902 KAR 1:400.** Administrative hearings.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. 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 administrative hearings is: KRS 211.180, 211.190, 211.210, 211.357, 211.360, 211.760, 211.844, 211.870, 211.925, 211.964, 212.170, 212.210, 212.230, 212.620, 212.627, 216.920, 217.075, 217.125, 217.809, 217.950, 217C.040, 217C.050, 219.031, 219.370, 223.070, 7 CFR Part 246, KRS Chapter 13B.

(b) The administrative regulation that the Department for Health Services intends to promulgate is 902 KAR 1:400, Administrative hearings. This administrative regulation establishes, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the Department for Health Services in hearing appeals of actions taken under the public health laws of the Commonwealth.

(c) The necessity and function of the proposed administrative regulation is as follows: Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Health Services with the Cabinet for Health Services. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. The function of this administrative regulation is to establish, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the Department for Health Services in hearing appeals of actions taken under the public health laws of the Commonwealth.

(d) The benefits expected from this administrative regulation are: To establish procedures for the department to follow in conducting hearings for regulated entities within the Department for Health Services in order to comply with the requirements of KRS Chapter 13B.

Division of Epidemiology

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division of Epidemiology

(1) Regulation numbers and titles: **902 KAR 2:060**, Immunization schedules; **902 KAR 2:090**, Tuberculosis testing.

(2) The Cabinet for Health Services, Department for Health Services, Division of Epidemiology, intends to promulgate administrative regulations governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for June 28, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for public hearing, and agreement to attend the public hearing, are not received by the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

(b) On a request for public hearing, the 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 the Administrative Regulation Coordinator, Department for Health Services, Commissioner's Office, 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 for 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 regulations:

(a) The statutory authority for the promulgation of the administrative regulations relating to 902 KAR 2:060 and 2:090 is found in KRS 194.050 and 211.090.

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

1. Amend 902 KAR 2:060, Immunization schedule to include the new requirement for immunization against mumps, hepatitis B, and Haemophilus influenzae and to bring the immunization schedule into accordance with current schedule recommendations for vaccine administration.

2. Amend 902 KAR 2:090, Tuberculosis testing, to incorporate drug susceptibility testing, facilitation of management of persons with active tuberculosis, and hospitalization in a timely manner of persons with tuberculosis.

(c) The necessity and function of the proposed administrative regulation is as follows: The department is promulgating these administrative regulations in order to meet the legislative intent of amendments to KRS 214.034 and Chapter 215 enacted by the 1996 General Assembly.

(d) The benefits expected from the proposed administrative regulations are increased protection against additional vaccine preventable diseases for Kentucky's children and increased ability to detect, prevent, and control tuberculosis in the Commonwealth.

(e) The administrative regulations will be implemented by the Division of Epidemiology, Department for Health Services, Cabinet for Health Services.

Division of Maternal and Child Health

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division of Maternal and Child Health

(1) **902 KAR 4:016**, Repeal of 902 KAR 4:010, Lay-midwifery and 902 KAR 4:015, Nurse midwifery.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., 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 Health Services, Commissioner's Office, 1st Floor Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 4:016 is KRS 194.050, 211.090, and 211.180.

(b) The administrative regulation that the Cabinet for Health Services, Department for Health Services intends to promulgate will repeal 902 KAR 4:010, Lay-midwifery and 902 KAR 4:015, Nurse midwifery. It will repeal both regulations because they are no longer needed.

(c) The necessity and function of the proposed administrative regulation is as follows: 902 KAR 4:010 is no longer required because

the lay-midwives who this regulation authorized to renew their existing permits no longer practice lay-midwifery. 902 KAR 4:015 is no longer required because the specific five (5) nurse midwives, who had existing permits prior to Executive Order 83-660 who this regulation authorized to continue to have permits issued, no longer practice nurse midwifery. The regulatory function for nursing practice was transferred to the Kentucky Board of Nursing.

(d) The benefits expected from administrative regulation are: Two administration regulations which are no longer applicable will be removed from the books/repealed.

Division of Health Systems Development

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division of Health Systems Development

(1) **902 KAR 14:010**, Emergency medical services (EMS) personnel funding assistance.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m. in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 14:010 is: KRS 211.956 and Executive Order 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 14:010. It will provide monies from the fund to city or county governments for the following purposes:

1. Purchase of emergency medical training equipment and emergency medical services training aids;
2. Provision of continuing education to certified emergency medical technicians, paramedics, first responders, and related emergency medical services personnel who respond to medical emergencies which are required to maintain state certification or licensure;
3. Salary and fringe benefit enhancements for emergency medical technicians and paramedics who serve as attendants of ambulance services which are owned and operated by the applicant city or county or by an ambulance service district established pursuant to KRS Chapter 108; and
4. Programs to train the general public in cardiopulmonary resuscitation or first aid in order to increase the likelihood of a citizen to render assistance in medical emergencies.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 693 passed in the last session of the 1996 General Assembly and signed by the Governor amended KRS 211.956 with regard to disseminating matching grant funds to better assist city and county governments in providing for an adequate number of trained emergency medical service personnel to respond to medical emergencies.

(d) The benefits expected from administrative regulation are:

1. The cabinet will comply with HB 693;
2. Greater assistance to local governments in providing an adequate number of trained emergency medical service personnel to respond to medical emergencies.

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division for Health Systems Development

(1) **902 KAR 14:061**. Repeal of 902 KAR 14:060, Nonemergency health transportation providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ambulance providers is: KRS 211.950 to 211.958, 216B.042, 216B.105, and Executive Order 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Comply with KRS 211.952 to 211.958, Section 7, as amended in the 1996 General Assembly, to abolish the ambulance provider category, Nonemergency health transportation services, effective December 31, 1996. This proposed administrative regulation will repeal 902 KAR 14:060 related to nonemergency health transportation providers.

(c) The necessity and function of the proposed administrative regulation is as follows: Repeal 902 KAR 14:060 related to Nonemergency health transportation services in compliance with KRS 211.950 to 211.958, Section 7, as amended in the 1996 General Assembly.

(d) The benefit expected from administrative regulation is: The cabinet will comply with KRS 211.950 to 211.958, Section 7, as amended in the 1996 General Assembly.

Division of Health Systems Development

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division of Health Systems Development

(1) **902 KAR 14:070**, Licensure procedures and fee schedule for ambulance providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main St., Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 14:070 is: KRS 211.950 to 211.958, 215B.042, 216B.410, Chapter 13B, and Executive Order 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 14:070. It will: Provide license procedures and fee schedules for the following classes of ambulance providers:

1. Air ambulance providers;

2. Class I ground ambulance providers, (emergency and nonemergency basic life support (BLS) or advanced life support (ALS)

services);

3. Class II ground ambulance providers, (nonemergency BLS services);

4. Class III ground ambulance, (Mobile intensive care services at or above ALS care requiring specialized equipment); and

5. Eliminate nonemergency health transportation (NEHT) providers category effective December 31, 1996. NEHT providers licensed as of March 31, 1996 may apply to convert to either a disabled persons carrier or to a Class II ground ambulance provider without an additional certificate of need, provided they meet the licensing or certificate requirements.

Conform to the requirements of KRS Chapter 13B governing administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. House Bill 492 passed in the last session of the 1996 General Assembly and signed by the Governor amended KRS 211.950 and 211.952 to establish classes of ambulance providers.

2. The cabinet is amending its regulations on hearing procedures as outlined in KRS Chapter 13B.

(d) The benefits expected from this administrative are:

1. Ambulance providers in Kentucky will be regulated and inspected. This will help ensure protection of the public's health improving consistency in services and improved prehospital care.

2. The cabinet will be in compliance with KRS Chapter 13B by amending its hearing provisions in the administrative regulation.

3. The cabinet will be in compliance with KRS 211.950 to 211.958.

4. Increased revenues from increased fees will offset increased cost in licensing and inspecting ambulances and ambulance services.

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division for Health Systems Development

(1) **902 KAR 14:080**, Class I ground ambulance providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ambulance providers is: KRS 211.952 and 216B.042.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Amend 902 KAR 14:080 to establish the category of Class I ground ambulance provider and provide minimum licensing requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 211.952, as amended in the 1996 General Assembly, requires the cabinet to promulgate administrative regulations to address specific requirements for licensing, inspection, and regulation of Class I ground ambulance providers.

(d) The benefit expected from administrative regulation is: That the cabinet will be in compliance with KRS 211.952.

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division for Health Systems Development

(1) **902 KAR 14:082**, Class II ground ambulance providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ambulance providers is: KRS 211.952, 216B.042, and Executive Order 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Establish the category of Class II ground ambulance provider and establish minimum licensing requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 211.952, as amended in the 1996 General Assembly, requires the cabinet to promulgate administrative regulations to address specific requirements for licensing, inspection, and regulation of Class II ground ambulance providers.

(d) The benefit expected from administrative regulation is: That the cabinet will be in compliance with KRS 211.952.

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division for Health Systems Development

(1) **902 KAR 14:084**, Class III ground ambulance providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ambulance providers is: KRS 211.952, 216B.042, and Executive Order 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Establish the category of Class III ground ambulance provider and establish minimum licensing requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 211.952, as amended in the 1996 General Assembly, requires the Cabinet to promulgate administrative regulations to address specific requirements for licensing, inspection, and regulation of Class III ground ambulance providers.

(d) The benefit expected from administrative regulation is: That the cabinet will be in compliance with KRS 211.952.

Date: May 15, 1996
Cabinet for Health Services
Department for Health Services
Division for Health Systems Development

(1) **902 KAR 14:090**, Air ambulance providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ambulance providers is: KRS 211.952, 216B.042, 216B.105, and Executive Order 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Amend 902 KAR 14:090 to provide minimum licensing requirements for air ambulance providers utilizing the standards recommended by the Association of Air Medical Services.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 211.952, as amended in the 1996 General Assembly, requires the cabinet to promulgate administrative regulations to address specific requirements for licensing, inspection, and regulation of Air ambulance providers.

(d) The benefit expected from administrative regulation is: That the cabinet will be in compliance with KRS 211.952.

Date: May 15, 1996
Cabinet for Health Services,
Department for Health Services
Division for Health Systems Development

(1) **902 KAR 14:100**, Medical first response providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ambulance providers is: KRS 211.952, 216B.042, 216B.105, and Executive Order 95-79.

(b) The administrative regulation that the Department for Health Services intends to promulgate will: Establish the category of medical first response provider and establish minimum licensing and fee requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 211.952, as amended in the 1996 General Assembly, requires the cabinet to promulgate administrative regulations to address specific requirements for licensing, inspection, and regulation of medical first response providers.

(d) The benefit expected from administrative regulation is: That the cabinet will be in compliance with KRS 211.952.

Department for Public Health
Office of Radiation and Toxic Agents

Date: May 15, 1996
Cabinet for Health Services
Department for Public Health
Office of Radiation and Toxic Agents

(1) **902 KAR 100:022**. Licensing requirements for land disposal of radioactive waste, Cabinet for Health Services, Department for Public Health.

(2) The Cabinet for Human Resources intends to amend 902 KAR 100:022 which establishes procedures, criteria, terms, and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Acting General Counsel, Administrative Law, Office of 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: Dee Swain, Administrative Regulation Coordinator, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) KRS 211.844 provides the statutory authority for the promulgation of administrative regulations relating to ionizing radiation by the Cabinet for Health Services. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of sources of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(b) The administrative regulation the Cabinet for Health Services intends to promulgate will amend 902 KAR 100:022. It deals with procedures, criteria, terms, and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons.

(c) The necessity and function of the proposed administrative regulation is as follows: The amendment is necessary to meet U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as required by Section 274 of the Atomic Energy Act, as amended. KRS 211.844(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. The KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. 902 KAR 100:022 establishes procedures criteria, terms,and conditions upon which the cabinet issues licenses for the land disposal of radioactive wastes received from other persons. This administrative regulation shall apply to persons prescribing land disposal which involves disposal of radioactive waste received from other persons except: (1) Disposal of by-product material as defined in 902 KAR 100:010 in quantities greater than 10,000 kilograms and containing more than five (5) millicuries of radium-226; or (2) Disposal of licensed material as provided in 902 KAR 100:021.

(d) The benefits expected from this administrative regulation are: The amended administrative regulation modifies the definition in 902 KAR 100:022(1) of a "land disposal facility" in order to comply with U.S. Nuclear Regulatory Commission (NRC) modifications to 10 CFR Part 61 thus allowing Kentucky to address, if necessary, options other than in ground disposal. The amended administrative regulation addresses Section 5(10) which deals quality assurance programs for disposal of low level radioactive waste. These amendments will allow Kentucky to maintain its compatibility status with the NRC.

Department for Medicaid Services

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

(1) **907 KAR 1:013**, Payments for hospital inpatient 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 June 28, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996 the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program for hospital inpatient services.

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

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

(1) **907 KAR 1:034**, Early and periodic screening, diagnosis, and treatment services; **907 KAR 1:035**, Payments for early and periodic screening, diagnosis, and treatment services; **907 KAR 1:715**, School-based health services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate three 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 June 28, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:034 are KRS 194.050, 42 USC 1396d, 42 CFR 441.50 through 441.62. The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:035 are KRS 194.050, 42 CFR 440.40(b), 447 Subpart B, 42 USC 1396a, b, d. The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:715 are KRS 194.050 and 205.560.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:034, 907 KAR 1:035, and create a new administrative regulation 907 KAR 1:715 to comply with KRS 605.115 to permit local school districts to participate as Medicaid providers and receive reimbursement for health related services identified in the child's individual education plan when provided to Medicaid eligible recipient.

(c) The necessity and function of the proposed administrative regulation is as follows: 907 KAR 1:034 sets forth the provisions relating

to the early and periodic screening, diagnosis, and treatment (EPSDT) services for which Medicaid Program payments shall be made. 907 KAR 1:035 sets forth the method for determining amounts payable by the Medicaid Program for EPSDT services. 907 KAR 1:715 sets forth the provisions relating to school-based health services for which payments shall be made by the Medicaid Program.

(d) The benefits expected from administrative regulation are: These administrative regulations will permit local school districts to participate through the Department of Education as Medicaid providers and receive reimbursement for health related services identified in the child's individual education plan. This will permit Kentucky to leverage additional unbudgeted federal Medicaid funds; thereby, increasing funds available to local school districts while assuring necessary medical services are provided to Medicaid eligible children.

Department for Mental Health/Mental Retardation Services

Date: May 13, 1996
Cabinet for Health Services
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:300**, Chemical Dependency Program evaluation.

(2) The Department for Mental Health and Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to June 28, 1996, the public hearing will be canceled.

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

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

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

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

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

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' 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 nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and KRS Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:300. It will revise the standards for gathering information on clients discharged from publicly funded chemical dependency treatment programs.

(c) The necessity and function of the proposed administrative regulation is as follows: To promulgate administrative regulations governing the gathering of information on clients discharged from publicly funded chemical dependency treatment agencies and the format of reports of this information to the cabinet in order to assess treatment effectiveness.

(d) The benefits expected from the administrative regulations are: The burden of contacting clients after discharge from publicly funded chemical dependency treatment will be shifted from provider agencies to a research institution. Improvements in research design, data collection, data analysis and presentation of results are expected.

(e) The administrative regulations will be implemented as follows: The regulation will be implemented by the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse.

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 5:302

This emergency administrative regulation provides for uniformity for all delegations of authority by the Finance and Administration Cabinet, requires the agency receiving the authority to provide information showing it is competent in the proposed delegated area, and requires the agency receiving the authority to certify that they will follow all requirements of KRS Chapter 45A in implementing the delegation. The 1996 General Assembly passed HB 107 that makes $1,000 the small purchase authority limit for state agencies other than the Finance and Administration Cabinet. This bill will become effective July 15, 1996 and will result in several state agencies having lower small purchase limits than they have now. However, HB 107 allows the $1,000 limit to be raised by the Secretary of Finance and Administration in accordance with Finance and Administration Cabinet administrative regulations. To apply the standards for an increase in the small purchase limit as set out in the emergency administrative regulation to state agencies requesting to keep their present small purchase limitations, the Finance and Administration Cabinet must promulgate this emergency administrative regulation. An ordinary administrative regulation would not be effective before July 15, 1996. Also, as part of the Finance and Administration Cabinet's efforts to respond to the State Auditor's report on the Ben Snyder Block Purchase, the Finance and Administration Cabinet is proposing several safeguards for all types of delegation of authority - not just small purchases. To keep all delegations of authority in one administrative regulation, the Finance and Administration Cabinet has included nonsmall purchase delegation administrative regulations with the small purchase delegation emergency administrative regulation. The ordinary administrative regulation to follow will also include the nonsmall purchase delegation administrative regulations. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 15, 1996.

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

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 5:302E. Delegation of authority.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.035, 45A.045(3), 45A.050(5)
EFFECTIVE: May 15, 1996
NECESSITY AND FUNCTION: This administrative regulation is required by KRS 45A.035 where the Secretary of the Finance and Administration Cabinet delegates purchasing authority to any other agency. It will provide uniformity for all delegations of authority by the Finance and Administration Cabinet and help to ensure that the agency receiving the authority is competent in the proposed delegated area. The administrative regulation will also help to insure that the agency receiving the authority follows all requirements of KRS Chapter 45A. This administrative regulation includes the substance of the administrative regulation to be repealed, 200 KAR 5:301.

Section 1. Delegations of Authority Other than for Small Purchases. Delegation by the Finance and Administration Cabinet pursuant to KRS 45A.045(3), other than small purchase delegation, shall be effected by secretary's order.

(1) A governmental entity requesting a delegation from the Finance and Administration Cabinet under KRS 45A.045(3), other than small purchase delegation, shall submit, in writing to the secretary, a detailed justification for the delegation, a statement that the entity will comply with all applicable laws, administrative regulations and Finance and Administration Cabinet policies and procedures; and proof of competency in the proposed delegated area.

(2) The secretary's order shall specify the authority the entity is receiving, the purpose for which the delegation is given, and the period of time for which the delegation is valid.

(3) Any agency receiving such delegation shall comply with the provisions of KRS Chapter 45A and all other purchasing statutes, administrative regulations and policies and procedures of the Finance and Administration Cabinet.

(4) Each agency receiving the delegation shall annually certify to the secretary that it is in compliance with all such laws, administrative regulations and policies. This certification shall be filed with the secretary on or before January 1, 1997 and thereafter on July 1 of each year, including July 1, 1997.

Section 2. Delegation of Authority for Small Purchases. Delegation by the Finance and Administration Cabinet pursuant to KRS 45A.100 shall be effected by secretary's order.

(1) An agency request for small purchase delegation above the limits established in KRS 45A.100 shall be submitted to the secretary, shall be signed by the agency head submitting the request and shall supply the following information:

(a) The total dollars spent each of the two (2) preceding fiscal years under the agency's existing small purchase authority and the number of small purchase transactions represented by those dollar figures for each fiscal year.

(b) A description of the agency's organizational structure which must demonstrate that the placement of the procurement function is appropriate to the agency's size and procurement needs.

(c) A description of the agency's internal controls, which are to ensure adequate safeguarding of assets and the segregation and separation of duties, particularly the separation of purchasing, accounting, and receiving functions.

(d) Documentation that the agency has prepared and implemented a plan to identify and utilize small and minority owned suppliers for small purchases. The agency's future goals in this respect shall be reported, with a goal of five (5) percent utilization being the minimum. An action plan showing how the agency plans to reach its goals shall be included. The agency shall be prepared to report its progress toward meeting that goal upon request by the secretary.

(e) The agency must acknowledge that it is aware of, and in compliance with, the provisions of KRS 45A.500 and 200 KAR 5:330 relating to recycled material content products.

(2) The agency must demonstrate that it meets the following minimum criteria to qualify for a higher small purchase delegation:

(a) Every record of control weakness or noncompliance relating to procurement practices issued to the agency by the Auditor of Public Accounts, internal auditors, or the Finance Divisions of Purchases or Contracting and Administration, for each of the past two (2) fiscal years, must be addressed by implementation of appropriate corrective measures, to the satisfaction of the Secretary of the Finance and Administration Cabinet. A copy of each record of control

weakness or noncompliance relating to procurement practices and the agency's response to the findings shall be submitted with the agency's request.

(b) The agency's procurement personnel, below the level of branch manager, who will actually be given signature authority to make purchases at the requested higher small purchase limits must have either completed the introductory course in purchasing offered by the National Institute of Governmental Purchasing, an equivalent course offered by the National Association of Purchasing Management, or a course offered by the Finance Divisions of Purchases or Contracting and Administration. The agency's request shall identify the personnel, below the level of branch manager, who will exercise the higher authority and list the professional purchasing certifications or training received by each of those persons.

(c) The agency shall utilize each on-line function of the Kentucky Automated Purchasing System that has been offered to the agency by Finance Purchases. This utilization shall be confirmed by the Division of Purchases.

(3) The Divisions of Purchases and Contracting and Administration may perform or request the performance of periodic procurement audits of the various agencies for compliance with the provisions of KRS Chapter 45A, purchasing administrative regulations and the Finance and Administration Cabinet Manual of Policies and Procedures, and, whenever an agency demonstrates deficiencies in procurement expertise or practice, shall recommend that the secretary revoke or amend any delegations granted under this administrative regulation.

Section 3. 200 KAR 5:301. Delegation of purchasing authority, is hereby repealed.

JOHN P. MCCARTY, Secretary
APPROVED BY AGENCY: May 14, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell, General Counsel

(1) Type and number of entities affected: All state agencies and any other entity to which the Finance and Administration Cabinet may delegate purchasing authority.

(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 expected. However, no public comments have yet been received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None expected. However, no public comments have yet been received.

(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: Agencies, and any other entity, requesting delegation of authority other than small purchase authority will be required to draft a written request and file a certification annually that the agency or entity is in compliance with all relevant laws, regulations and policies. Agencies requesting delegation of small purchase authority above the established limits will be required to submit a written request supplying detailed information regarding the total dollars spent each of the two preceding fiscal years under existing small purchase authority, number of small purchase transactions represented by those dollar figures for each fiscal year, the agency's organizational structure, a description of the agency's internal controls ensuring safeguarding of assets and segregation of duties, documentation that the agency has prepared and implemented a plan to identify and utilize small and minority owned suppliers for small purchases, and an action plan showing how the agency plans to reach its goals. The agency shall also be prepared to report its progress toward meeting that goal upon request by the Finance and Administration Cabinet.

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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Finance and Administration Cabinet will be required to review and keep on file each written request for delegation of authority, secretary's order, and related documentation submitted by the agency or entity to which purchasing authority is delegated. In addition, the Finance and Administration Cabinet, Divisions of Purchases and Contracting and Administration may perform or cause to be performed periodic procurement audits of the various agencies for compliance with the provisions of KRS Chapter 45A, purchasing regulations and the Finance and Administration Cabinet Manual of Policies and Procedures.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: None expected. However, no public comments have yet been received.

(b) Kentucky: None expected. However, no public comments have yet been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the least intrusive and disruptive method of insuring compliance with KRS Chapter 45A whenever the Finance and Administration Cabinet delegates purchasing authority pursuant to statute. It requires the agency or entity delegated the authority to comply with KRS Chapter 45A and to certify to the secretary on an annual basis that they are in compliance. It also provides certain security levels for small purchase delegations.

(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 on the environment and public health would result.

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

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 200 KAR 5:301 - To be repealed.

(a) Necessity of proposed regulation if in conflict: Existing regulation to be repealed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. The regulation applies equally to all state agencies or other entities.

STATEMENT OF EMERGENCY
201 KAR 1:040E

The Kentucky State Board of Accountancy has recently been advised by the organization that prepares and grades the Uniform Certified Public Accountant Examination of specific changes to the

procedures for administering the examination which must be followed for the examination scheduled for May 8-9, 1996. The most significant of these changes is that individuals who sit for the examination will no longer be able to take their examination question booklets with them following the administration of the examination. Instead the booklets must be returned to the testing agency. Presently, there is no such requirement in the administrative regulation that governs procedures for conducting the examination. The administrative regulation will also be amended to declare that any disclosure of the examination material will subject the examination candidate to disqualification. An emergency administrative regulation is necessary since the board was just recently made aware of the specific changes by the testing agency and the examination is scheduled for May 8-9, 1996. The normal time period for changes to this administrative regulation to go into effect would be after the examination would take place. Therefore, this emergency administrative regulation is necessary so these new procedures will go into effect immediately. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL PATTON, Governor
ASA L. HORD, CPA, President

GENERAL GOVERNMENT CABINET
State Board of Accountancy

201 KAR 1:040E. Procedures for conducting examination.

RELATES TO: KRS 325.270
STATUTORY AUTHORITY: KRS 325.240
EFFECTIVE: May 2, 1996
NECESSITY AND FUNCTION: This administrative regulation describes the procedure for conducting examinations.

Section 1. In May and November of each calendar year, the board shall conduct an examination for examination candidates who have met the requirements of 201 KAR 1:130.

Section 2. (1) At the examination site, a candidate shall be given a card bearing an identification number.

(2) The examination number shall be used on all papers submitted by the candidate in place of his name.

(3) If an examination candidate makes any other identification marks upon his examination papers, his papers shall be rejected.

Section 3. Answers to examination questions, shall be submitted by the candidate on paper furnished by the board.

Section 4. (1) Answers shall be turned in to the examiner-in-charge within the time allotted.

(2) The time allotted shall be stated on the examination question booklet.

(3) Papers, question booklets, [~~stationery~~] and supplies provided by the board, shall be returned at the completion of each section of the examination.

Section 5. Examination Misconduct. An examination candidate shall not:

(1) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(2) Communicate with any person, other than board staff, members or proctors, inside or outside the examination room, during the course of the examination;

(3) Copy answers or allow his answers to be copied; [~~or~~]

(4) Substitute an individual in his place;

(5) Disclose in any manner any portion or any information concerning the examination questions or content;

(6) Falsify or misrepresent educational credentials or other information required for admission to the examination; or

(7) Fail to follow written or announced examination administration procedures.

Section 6. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination subject;

(2) Receiving grades on any or [~~Submitting~~] all examination papers; or

(3) Sitting for subsequent examinations.

ASA L. HORD, CPA, President
APPROVED BY AGENCY: May 1, 1996
FILED WITH LRC: May 2, 1996 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Susan G. Stopher

(1) Type and number of entities affected: The type of entities affected are people scheduled to sit for the Uniform Certified Public Accountant Examination on May 8 and 9, 1996 and thereafter. The number of individuals affected are approximately 700 per exam administration.

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

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

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

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

1. First year following implementation: This administrative regulation will not create any additional reporting or paperwork requirements for individuals who sit for the examination.

2. Second and subsequent years: See #1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Due to an increase in security measures to administer the nondisclosed exam, the costs associated with each administration of the exam is anticipated to increase by approximately $2,000.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Examination proctors and board employees will be required to sign and submit an agreement to keep all information regarding the exam confidential.

(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: Funds from the board's trust and agency account.

(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 other alternative methods could be assessed since this is the only national uniform licensure examination available for CPA's. Therefore, any requirements of the testing organization must be followed by the board.

(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: There are no known statutes, administrative regulations or government policy which may be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified candidates.

STATEMENT OF EMERGENCY
201 KAR 8:430E

This emergency regulation establishes definitions of unprofessional conduct for which disciplinary action may be taken against a licensee by the Board of Dentistry. The Jefferson Circuit Court, in a judicial appeal of an administrative agency decision sanctioning a licensee for unprofessional conduct, has held the term unconstitutionally vague and unenforceable. This decision is not yet final. This emergency administrative regulation must be placed into effect immediately in order to avoid an imminent threat to the public health, safety, and welfare, of the citizens of this Commonwealth from the unprofessional conduct of licensees. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed at a later date.

PAUL E. PATTON, Governor
STEPHEN T. SCHULER, D.M.D., President

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry

201 KAR 8:430E. Unprofessional conduct.

RELATES TO: KRS 313.130(3)
STATUTORY AUTHORITY: KRS 313.140
EFFECTIVE: May 15, 1996
NECESSITY AND FUNCTION: Establishes definitions of unprofessional conduct for which disciplinary action may be taken against a licensee by the Board of Dentistry.

Section 1. Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country. For purposes of this section, the surrender of a license under threat of revocation shall be considered the same as if it had been revoked.

Section 2. Committing any act which would constitute sexual battery, as defined in KRS Chapter 500, upon a patient or employee; intentionally touching a sexual organ of a patient; sexually harassing any patient or employee; or engaging in any other lewd or immoral conduct in connection with the provision of dental services.

Section 3. (1) Failing to keep written dental records and medical history records justifying the course of treatment or the patient including, but not limited to, patient histories, examination results, and X-rays if taken;

(2) Failure to provide and maintain reasonable sanitary facilities and conditions.

(3) Failure to provide adequate radiation safeguards.

(4) Being guilty of incompetence or negligence by failure to meet the minimum standards of performance in diagnosis and treatment when measured against that degree of care and skill which is expected of a reasonably competent dentist or dental hygienist acting in the same or similar circumstances, and belonging to the same class to which the accused dental practitioner belongs.

(5) Practicing beyond the scope of dentistry.

(6) Presigning blank prescription or laboratory work order forms.

(7) Administering anesthesia or failing to report any injuries to patients in any manner which violates administrative regulations promulgated by the board subject to the provisions of KRS Chapter 13A.

(8) Failing to make available to a patient, or the patient's legal representative or to the board if authorized in writing by the patient, copies of documents in the possession or under control of the licensee which relate to the patient according to KRS 422.317.

Section 4. Performing professional services without first obtaining the informed consent of the patient or the patient's legal representative, except in the case of an emergency or other circumstances where the patient is incapable of providing consent. For purposes of the chapter, "informed consent" is deemed to have the same meaning as specified in KRS 304.40-320.

Section 5. Prescribing, procuring, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance:

(1) Other than in the course of the professional practice of the dentist.

(2) In excessive amounts or inappropriate quantities not in the best interest of patient.

(3) To himself or herself any medicinal drug appearing on Schedule I, II, III, or IV, as set forth in KRS Chapter 218A.

Section 6. Being unable to practice the profession with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. In enforcing this section, the board, upon a finding of the board or its designee that probable cause exists to believe that the licensee is unable to practice dentistry or dental hygiene because of the reasons stated in this section, shall have the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the board. If the licensee refuses to comply with that order, the board's order directing the examination may be enforced by filing a petition for enforcement in the Circuit Court where the licensee resides or does business. The licensee against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. A licensee affected under this section shall at reasonable intervals be afforded an opportunity to demonstrate that the licensee can resume the competent practice of the profession with skill and safety to patients.

Section 7. Presenting false or misleading testimony or statements to the board or the board's investigator or employees during the scope of any investigation, or at any hearing of the board, or at any civil or criminal proceeding relating to the licensee's or any other licensee's practice of dentistry or dental hygiene.

Section 8. The violation or the repeated violation of any section of this chapter, or of any administrative regulation promulgated pursuant to this chapter or KRS Chapter 13A; the violation of a lawful order of the board previously entered in a disciplinary hearing; or failure to comply with a lawfully-issued subpoena of the board.

Section 9. Conspiring with another licensee or with any person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude any patient or witness to testify against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the board during any investigation of any licensee under this chapter.

Section 10. Any other act not specified in this section which creates a danger to the public, patients, or employees of a licensee, or which demonstrates a lack of moral qualifications to practice under this chapter, or brings the profession under disrepute.

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: May 11, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Gary Munsie

(1) Type and number of entities affected: Approximately 2625 licensed dentists who are residents of the Commonwealth of Kentucky or nonresidents of Kentucky who hold licenses to practice in the Commonwealth of Kentucky.

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

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

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This regulation establishes definitions of unprofessional conduct which clarify the actions for which the administrative agency may take disciplinary action against a licensee thus saving time and legal expenses in disciplinary hearings and appeals.

1. First year:

2. Continuing costs or savings: This regulation will save the administrative agency some time and legal expenses by reducing the number of legal issues to be raised at a disciplinary hearing and further appeals.

3. Additional factors increasing or decreasing costs: None

(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: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation establishes definitions of unprofessional conduct for which the administrative agency may take disciplinary action against a licensee to protect the health, safety, and welfare of the citizens of this Commonwealth from the unprofessional conduct of licensees.

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

(c) If detrimental effect would result, explain detrimental effect: The administrative agency will not be able to protect fully the public health, safety, and welfare, of the citizens of the Commonwealth from the unprofessional conduct of licensees without definitions of unprofessional conduct.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 313.140(1) - (4) only partially defines unprofessional conduct for which disciplinary action may be taken against a licensee.

(a) Necessity of proposed regulation if in conflict: The proposed regulation further defines the term unprofessional conduct to update KRS 313.140(1) - (4) Which was last amended in 1964.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes. None of the provisions of the proposed regulation are directly duplicative of the provisions of KRS 313.140(1) - (4).

(10) Any additional information or comments: The current definition of unprofessional conduct was declared unconstitutional by the Jefferson Circuit Court in an administrative appeal of a decision disciplining a licensee. That decision is not yet final, however.

(11) TIERING: Is tiering applied? None. One class of licensees may have disciplinary action taken against him or her for unprofessional conduct.

STATEMENT OF EMERGENCY
500 KAR 11:001E

The purpose of this emergency administrative regulation is to establish additional definitions for terms found in 500 KAR Chapter 11 and not otherwise defined in KRS 238.505. It is necessary to promulgate this emergency administrative regulation because House Bill No. 5 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, April 10, 1996. The administrative regulations currently effective in 500 KAR Chapter 11 require definitions for certain terms not otherwise defined by statute and definitions are needed before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
E. DANIEL CHERRY, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:001E. Definitions.

RELATES TO: KRS 238.500 to 238.995
STATUTORY AUTHORITY: KRS 238.515(9)
EFFECTIVE: May 15, 1996
NECESSITY AND FUNCTION: KRS Chapter 238 authorizes the Division of Charitable Gaming to adopt administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 500 KAR Chapter 11.

Section 1. Definitions. The following definitions describe terms used in administrative regulations found in 500 KAR Chapter 11. Terms not defined below shall have the meanings given to them by KRS 238.505 or if not so defined, the meanings attributed by common use.

(1) "Bet block" means an area which indicates the dollar amount of the wager.

(2) "Card" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free

center space, and the letters, "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(3) [~~(2)~~] "Cash" means currency, coinage or a negotiable instrument.

(4) "Conditioning" means a restatement of how many numbers or combination of numbers are being selected by the players, the way in which they are wagered, and the corresponding dollar amounts wagered.

(5) [~~(3)~~] "Covered" means daubed or smeared with indelible ink.

(6) [~~(4)~~] "Deal" means each separate game or series of charity game tickets with the same serial number.

(7) [~~(5)~~] "Designator" means an item used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

(8) [~~(6)~~] "Disposable paper bingo card" means a nonreusable, paper bingo card bearing preprinted numbers and assembled in multiple card sheet, single sheet, pad or packet form.

(9) "Draw ticket" means a ticket upon which the numbers randomly selected are marked on a blank ticket as the numbers are selected.

(10) "EPROM" means Erasable Programmable ROM.

(11) "Exception log" means a record documenting any prize payouts which have not been authorized by the computer.

(12) [~~(7)~~] "Face" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(13) [~~(8)~~] "Flare" means a piece of paper or cardboard or similar material which bears printed information relating to the number of prizes to be awarded and the specific prize amounts in a particular deal of charity game tickets.

(14) "Inside ticket" means a blank Keno ticket constructed with eighty (80) blocks containing the printed numbers one (1) - eighty (80) and containing a bet block.

(15) "Keno" means a numbers game in which participants choose from one (1) to ten (10) numbers from a pool of eighty (80) numbers, and the winner(s) and their prize(s) are determined on the basis of correctly matching their numbers to the twenty (20) numbers generated for each game.

(16) "Keno equipment" means electronic selection devices, random number generators and computerized Keno systems/integrated systems of computer hardware and software that generate player tickets, record game outcomes, verify winning tickets, produce management reports and perform other internal audit controls of the Keno operation.

(17) "Keno manager" means the person in charge of the operation of the Keno game.

(18) "Multirace ticket" means a single ticket which allows a player to make the same wager on consecutive games.

(19) "Outside ticket" means a computer generated ticket given to the player which reflects certain game and wagering information.

(20) [~~(9)~~] "Perm number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

(21) "PROM" means Programmable ROM.

(22) "Quick pick" means a number selection made for the player by a computer.

(23) "RAM" means random access memory and is the electronic memory that the computer uses to store information.

(24) "Random number generator" means a hardware, software or combination hardware and software device for generating number values that exhibit characteristics of randomness.

(25) "Regrade" means to manually recalculate the prize payout of a winning ticket according to the printed pay schedule.

(26) "ROM" means read only memory which is the electronic component used for storage of nonvolatile information in Keno equipment and provides instructions the computer needs to begin its operations each time the computer is turned on. The term includes PROM and EPROM.

(27) [~~(10)~~] "Selection device" means a device that may be operated manually or automatically and is used to randomly select bingo numbers.

(28) [~~(11)~~] "Serial number" means a unique number printed by the manufacturer on each card in a set and which is unique to that set.

(29) [~~(12)~~] "Series number" means the number of unique card faces contained in a set.

(30) [~~(13)~~] "Set" means a specific group of cards from the same product line which are the same color, border pattern and imprinted with the same serial number. A set of cards may include more than one (1) series of cards or faces.

(31) "Transaction log" is a record either retained in the computer's memory or printed out by the computer which contains the same information printed on each outside ticket.

(32) [~~(14)~~] "Verification book" means a book compiled by the manufacturer of bingo cards that lists the unique pattern of numbers on each card by perm number and is used to verify the authenticity of a winning card.

(33) "Way ticket" means a single ticket which allows a player to wager on the combination of groups of numbers in various ways designated by the player.

(34) [~~(16)~~] "Year" means calendar year.

E. DANIEL CHERRY, Secretary
APPROVED BY AGENCY: May 13, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: All licensed manufacturers (currently 16), licensed distributors (currently 55), and licensed charitable organizations (currently 772).

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

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

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

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

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charity Gaming Regulation Account (KRS 238.570(2)).

(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: N/A

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is inapplicable.

STATEMENT OF EMERGENCY
500 KAR 11:110E

The purpose of this emergency administrative regulation is to establish the standards for the conduct of Keno. It is necessary to promulgate this emergency administrative regulation because House Bill 5, which authorized Keno as a "special limited charitable game", was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, April 10, 1996. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
E. DANIEL CHERRY, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:110E. Keno.

RELATES TO: KRS 238.505(17)
STATUTORY AUTHORITY: KRS 238.505(17), 238.515(2), (9)
EFFECTIVE: May 15, 1996
NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish circumstances under which "special limited charitable games" will be conducted. This administrative regulation establishes standards for the conduct of Keno, establishes reporting requirements, and establishes standards for the use of Keno equipment.

Section 1. Recordkeeping and Reporting Requirements. (1) For a period of thirty-six (36) months following the last date of the special limited charitable games, the charitable organization shall maintain accurate records as to the conduct of the Keno games. The records shall include:

(a) The information contained in the transaction log;

(b) Payout information for each game played;

(c) The number draw and time of the draw for each game played;

(d) Appropriate system parameter information including probable payout percentages and odds of winning for each game played;

(e) System exception information including voids and late pays for each game played; and

(f) The exception log.

(2) Other Keno records. The charitable organization shall retain all outside copies of winning tickets of $500 or more for a period of thirty-six (36) months following the date of the Keno games.

(3) At least once during each day of the special limited charitable games, the computer shall automatically update and generate a "daily game summary report", which shall be retained for a period of thirty-six (36) months following the date of the Keno games.

Section 2. Conduct of the Game - Keno. The following rules govern the conduct of Keno.

(1) All individuals involved in any way in the conduct of Keno shall be trained in the proper conduct of the game and the control of funds.

(2) Participation.

(a) No person under the age of eighteen (18) shall play or conduct the game of Keno.

(b) No individual involved in any capacity in the conduct of Keno at a charitable gaming event shall be permitted to play Keno at the same event and on the same day in which such individual was involved in the conduct of Keno.

(3) Only computerized Keno games may be conducted. Brush or manual games are prohibited.

(4) No player shall have access to, or be allowed to activate, the Keno equipment. Each number selected by the player, along with the amount wagered and the total numbers played shall be entered into the computer, and an outside ticket shall be presented to the player. The inside ticket shall be retained for such period deemed necessary by the Keno manager.

(5) Players shall mark the inside ticket with their number selections or selection by quick pick is permissible.

(a) Concurrently with the generation of the outside ticket, the information on the outside ticket shall be recorded on the transaction log.

(b) If a ticket is voided, the void information shall be input in the computer, and the computer shall document the appropriate information pertaining to the voided wager. A void slip shall then be issued, which shall be retained with the outside tickets to serve as documentation of the transaction.

(6) If the Keno equipment breaks down or malfunctions during the selection of the winning numbers and the problem is not promptly corrected, players shall be refunded the amount wagered upon presenting their outside ticket.

(7) Once the Keno manager is satisfied that all tickets for a game have been issued, the game shall be closed and all players shall be so notified. No tickets may be written or voided after a game has been closed and the number selection process has begun. Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and after the number selection process has begun.

(8) The potential payout or prize for each different type of wager shall be made known to the players prior to their selecting numbers. This may be done through posting the potential payouts in a manner clearly visible to the players or through a printed schedule that is available at each location where Keno is played.

(9) No ticket, including a way ticket, may be purchased representing a wager of over five (5) dollars, except that a multirace ticket may be purchased for an amount over five (5) dollars if the wager for each game does not exceed five (5) dollars.

(10) A statement indicating any time restrictions for redeeming a winning ticket shall be visibly posted at each location where Keno is played or printed on the outside ticket or the schedule of prize payouts.

(11) The outside ticket that is given to the player shall contain the following information:

(a) Date of the game;

(b) Numbers chosen by the player;

(c) Ticket sequence number;

(d) Conditioning of the ticket;

(e) Station number where the ticket was generated;

(f) Game number; and

(g) The name of the charitable organization.

(12) A draw ticket shall be prepared by the computer.

(13) A player shall wait until the last game wagered on has been called in order to collect any winnings. A player may be allowed to play fewer consecutive games than originally indicated, if approval has been obtained from the Keno manager and the voided wagers

are properly documented in the transaction log.

Section 3. Winner Verification. Winning tickets shall be verified prior to payout and paid in the following manner:

(1) Procedures shall be established to preclude payment of a ticket previously presented for payment, unclaimed winning tickets after a specified period of time, voided tickets, and tickets which have not been issued.

(2) The sequence number of a ticket presented for payment shall be input into the computer, and the payment amount shall be generated by the computer and shall be given to the player.

(3) No payouts shall be made unless a winning outside ticket has been presented. If the payout amount is not indicated on the outside ticket, a payout slip shall be issued.

(4) The exception log shall be produced and maintained documenting any payments made on tickets which have not been authorized by the computer.

(5) In addition to computer system approval, winning tickets of fifty (50) dollars through $250 shall be verbally verified by the Keno manager, winning tickets of over $250 require the signature of the Keno manager and winning tickets of $1,000 or more require approval of the Keno manager evidenced by his signature, the performance of comparison of the winning customer outside ticket to the transaction log and a regrading of the customer copy using the payout schedule and draw information.

Section 4. Security Standards and Controls. Access to the area in which Keno workers operate shall be restricted to charitable organization workers and authorized equipment service personnel only. Access to the computer system shall be adequately restricted, and the computer and Keno supplies shall be maintained under lock and key while not in use. These keys shall be maintained only by the designated chairperson of the charitable organization.

Section 5. Keno Tournaments Prohibited. Tournaments, whereby players pay an entry fee for a certain amount to play a number of Keno games and where prizes are awarded from a pool of entry fees paid back to the players based on their scores, are prohibited. Keno leagues played in a similar fashion as Keno tournaments are also prohibited.

Section 6. Progressive Keno Games Prohibited. Games with a prize payout that increases by a predetermined percentage or amount as each game is played if the prize has not been awarded in a previous game are also prohibited.

Section 7. Prize Payouts. (1) No individual prize valued in excess of $25,000 may be awarded in any Keno game.

(2) Every charitable organization shall have sufficient funds available to pay every winner of its Keno games by the end of the business day following the date such winning ticket is verified. Every winning prize shall be paid in full to the winning player and shall not be paid over a period of time or through an annuity, unless such annuity is the prize.

(3) For any prizes valued at $10,000 or more, the charitable organization shall have sufficient funds insured or guaranteed by:

(a) An insurance company licensed to transact business in Kentucky;

(b) Money deposited into an insured account maintained by a financial institution and held in escrow for these purposes;

(c) An irrevocable letter of credit issued by a financial institution; or

(d) A bond from a bonding company registered to do business in Kentucky.

(4) If two (2) or more tickets fulfill the requirements for winning the prize on the same game, the full prize shall be divided equally among the winning tickets subject to any prize payout limit per game. Applicable prize payout limits shall be legibly posted at each location where Keno is played and printed on the schedule of prize payouts.

(5) All unclaimed prizes shall be the property of the charitable organization.

(6) All winning tickets of $500 or more shall be paid to the player by check and not in cash, made payable to the order of the player.

(7) If there are multiple players on the same winning ticket and the prize is $500 or more, the prize payment shall also be paid by a single check and not in cash, made payable to the order of the players.

Section 8. Payout Structure. Each game of Keno shall be conducted in such a manner that the probable payout percentage for each game shall not exceed seventy-five (75) percent.

Section 9. Keno Equipment Maintenance and Standards. (1) An effective maintenance plan shall be established to service Keno equipment, including computer program updates, hardware servicing, and Keno number selection equipment.

(2) With the exception of routine maintenance, all Keno equipment maintenance shall be performed by the manufacturer's or distributor's authorized service personnel. Routine maintenance shall include clearing of ticket printer paper jams, changing printer heads and cutter bars, and changing paper tape, adding paper to the ticket printer or aligning the paper on the ticket printer.

(3) A manufacturer or distributor shall not offer or market any type of Keno equipment unless the equipment complies with the requirements contained in this section.

(4) The division shall have the authority to request the testing and approval of any Keno equipment at any time if deemed necessary in order to ensure fairness to the public and maintain the integrity of the game.

(5) Hardware requirements.

(a) All electrical and mechanical parts and design principles shall follow acceptable industrial codes in standards in both design and manufacture.

(b) Logic boards and software EPROM's shall be in a locked or sealed area within the machine or in a separate machine. No access to this area is allowed by persons other than the manufacturer's or distributor's authorized service personnel. Any unauthorized tampering or entrance into the logic area is prohibited.

(c) All PROMs and EPROMs shall have unique serial numbers that may be used to identify the PROMs and EPROMs for approval and inspection purposes. All logic boards shall have unique serial numbers or model numbers for approval and inspection purposes.

(d) A machine shall have a nonremovable identification label externally attached to the machine which includes the name of the manufacturer, the serial number of the machine and the model or make of the machine.

(6) Machine protection and integrity.

(a) A surge protector that feeds all power to the equipment shall be installed.

(b) The operation of the Keno equipment shall be impervious to influences from the outside of the device, including electromagnetic interference, electrostatic interference, and radio frequency interference.

(c) All computer functions and programs shall be secured in a locked and protective housing.

(d) The design of the Keno equipment shall ensure that there are no readily accessible game function related points which would allow any input and that there is no access to input or output circuits unless it is necessary for the proper operation of the equipment. No switches or other controlling devices may be added to the machine that would cause the machine to operate in a manner other than in which it was designed to play.

(7) Software requirements.

(a) The logic of the hardware or software may not interfere with

the random number generator software.

(b) The software shall meet the minimum internal control standards for the conduct of Keno.

(c) Machine programs shall be capable of detecting corruption and shall provide an error message due to failure of the program storage media and cause the machine to cease play until corrected.

(d) All programs residing in the equipment shall be contained in a storage media which is not alterable through any use of the circuitry or programming of the machine itself.

(8) Retention of game data.

(a) No Keno equipment shall have a mechanism whereby an error will cause the game data to automatically clear. Game data shall be maintained at all times regardless of whether the machine is being supplied with power.

(b) Game data shall be stored in such a way as to prevent loss of the data when replacing parts or modules during normal maintenance.

(9) Random number generator. Random number generator selection device. A random number generator shall reside on a PROM or EPROM secured in the logic board of the computer. The numbers selected by the random number generator for each game shall be stored in the computer's memory and be capable of being output to produce a draw ticket with no manual input of the numbers required. Each possible combination of numbers which produce winning or losing game outcomes shall be available for random selection at the initiation of each game. The random selection process shall not produce any patterns of game outcomes, or be dependent upon any previous number selections or game outcomes, the amount wagered, or upon the style or method of play.

(10) Printer.

(a) The numbers that the player selects shall be printed on the outside ticket.

(b) The printer mechanism shall have a paper-sensing device that upon sensing a "paper low" condition will allow the machine to finish printing the ticket and then prevent further ticket writing.

(c) Each machine shall recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket.

(d) Printed game data shall be printed in ink that will remain legible throughout the retention period required by Section 1 of this administrative regulation.

E. DANIEL CHERRY, Secretary
APPROVED BY AGENCY: May 14, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Sarah M. Jackson, Director

(1) Type and number of entities affected: Indeterminate number of licensed charitable organizations which desire to conduct Keno as a "special limited charitable game" and manufacturers and distributors of such equipment.

(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 costs or savings.

(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 costs or savings.

(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 imposes on licensed charitable organizations the duty of retaining certain information related to the conduct of Keno for a specific time period, and this requirement will call for limited paperwork or recordkeeping functions on these entities. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Finally, manufacturers and distributors must ensure that their equipment complies with the manufacturing requirements contained in this regulation.

2. Second and subsequent years: The administrative regulation imposes on licensed charitable organizations the duty of retaining certain information related to the conduct of Keno for a specific time period, and this requirement will call for limited paperwork or recordkeeping functions on these entities. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Finally, manufacturers and distributors must ensure that their equipment complies with the manufacturing requirements contained in this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some increase in staff time is expected as part of the process of approving Keno equipment.

2. Continuing costs or savings: Some increase in staff time is expected as part of the process of approving Keno equipment, which is expected to decrease over time.

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

(b) Reporting and paperwork requirements: Charitable organizations will be required to retain certain information related to the conduct of Keno. In addition, to the extent charitable organizations or other entities report defects in the Keno equipment, the Division of Charitable Gaming will have reporting requirements associated with informing the distributors or manufacturers of the reports.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Charitable Gaming, in devising the Keno regulations, relied heavily on standards adopted by other states which authorize the conduct of Keno.

(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: N/A

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applicable in this instance as regulation applies equally to all licensees.

STATEMENT OF EMERGENCY
702 KAR 3:285E

This emergency administrative regulation, as approved by the Kentucky Board of Education, is a companion administrative regula-

tion that needs to be simultaneously filed with a Medicaid administrative regulation, (907 KAR 1:715, 907 KAR 1:034, and 907 KAR 1:035), from the Cabinet for Human Resources, which establishes the School-based Health Services pPogram. This program will allow school districts to claim Medicaid reimbursement for health services required by the Individual Education Programs (IEPs) of Medicaid eligible children with disabilities. This administreative regulation requires a school district to verify the local expenditure of the state match which is necessary to enable the district to receive Medicaid reimbursement for services in IEPs.

PAUL PATTON, Governor
JOSEPH W. KELLY, Chairman

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of District Support Services

702 KAR 3:285E. School district Medicaid providers.

RELATES TO: KRS 156.070, 605.115
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.070 sets forth the Kentucky Board of Education's plenary powers over the management and control of local school districts and, along with KRS 156.160, gives the Kentucky Board of Education the authority to promulgate administrative regulations deemed necessary for the management of the school districts under its control. This administrative regulation is necessary to provide guidance for local school districts that choose to be Medicaid providers.

Section 1. Definitions. (1) "School district Medicaid recipient" means one who has been determined eligible for Medicaid-covered benefits provided by a local school district participating in the Medicaid Program.

(2) "School district Medicaid provider" means a local school district which has entered into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to receive Medicaid reimbursement for health-related services provided by the district.

Section 2. School District Medicaid Provider Agreements. (1) Pursuant to KRS 605.115, the Department of Education shall enter into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to provide reimbursement upon request to local districts for Medicaid covered benefits provided to eligible students.

(2) Local school districts may enter into an agreement with the Department for Medicaid Services, Cabinet for Human Resources, to become eligible to receive Medicaid reimbursement for Medicaid covered services provided to eligible students pursuant to KRS 605.115.

(3) Local school districts which choose to participate shall be required to comply with provider participation criteria set forth in 907 KAR 1:715, 907 KAR 1:034, and 907 KAR 1:035, promulgated by the Department for Medicaid Services, Cabinet for Human Resources.

Section 3. Administrative Guidelines. (1) To receive federal Medicaid reimbursement, local school districts shall provide the state's share of the Medicaid expenditure and shall be required to document and certify the expenditure of state funds for Medicaid reimbursable services provided to Medicaid eligible student recipients. This certification of the availability and expenditure of state funds shall be provided as needed to the Department for Medicaid Services by local school districts for verification of state matching funds entitling the local school district to reimbursement for specific Medicaid reimbursable services provided by the school district. Certification shall include a statement on the Medicaid claim form or a signed statement from the local school district superintendent or finance officer. The Department of Education and the Department for Medicaid Services, Cabinet for Human Resources, may examine any records, files, or documents necessary to verify expenditures for Medicaid covered services for which certification of state matching funds has been made.

(2) Documentation of available or expended state matching dollars shall be provided as required by the Department for Medicaid Services and may include the following:

(a) Records relating to time and attendance of service providers; or

(b) Records of expenditures, including invoices, related to the services provided by or through the local school district.

(3) Federal funds shall not be used by school districts to match Medicaid funds.

(4) Local school districts shall include in the annual audit an accounting of revenues and expenditures relative to serving Medicaid eligible student recipients. The Department of Education shall provide the Cabinet for Human Resources a copy of this annual audit.

(5) The Department for Medicaid Services, Cabinet for Human Resources, the Health Care Financing Administration of Health and Human Services, the Office of Inspector or their designated representatives may audit a local school district to verify compliance with all federal and state Medicaid statutes and administrative regulations relating to local school district receipt of Medicaid reimbursement for approved services.

Section 4. Parent/Guardian Consent. (1) Local school districts shall obtain written parent or guardian consent pursuant to the requirements of the Individuals with Disabilities Education Act (IDEA) regulations (34 CFR 300) prior to provision of services in an individual education program (IEP).

(2)(a) Parents or guardians shall be given prior written notification on an annual basis that the local school district may be submitting claims for Medicaid reimbursement of health related services provided to students with educational disabilities as required by the student's IEP.

(b) The rights of the parent or guardian under IDEA shall not be affected in any way as a result of the local school district's participation in the Medicaid program.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

WILMER S. CODY, Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: May 15, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact: Tom Willis

(1) Type and number of entities affected: 176 local school districts.

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

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

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

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

competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reports to this agency will be required as a result of this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: Local school districts which participate will experience an increase in federal funds.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required. Regulation will be enforced by Department of Education.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 160.730 requires promulgation of a regulation on this subject.

(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 occur, explain detrimental effect: N/A

(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. The administrative regulation applies equally to all 176 local school districts.

STATEMENT OF EMERGENCY
803 KAR 50:010E

As the Attorney General (acting as KOSH hearing officer) interprets Section 15 of this administrative regulation, labor unions and small businesses must be represented by an attorney at KOSH hearings. Because labor unions and small businesses often cannot afford to hire an attorney, they are settling their cases rather than exercising their statutory right to an evidentiary hearing before the Attorney General as an agent of the KOSH Review Commission. Labor unions are at a particular disadvantage because they are effectively prohibited from fulfilling their contractual obligation to represent their members. For the state OSH plan to remain in existence and to continue receiving federal funding, the Kentucky state plan must be as effective as the federal OSH Act. This emergency administrative regulation provides exactly the same rights as labor unions and businesses enjoy under the federal OSH Program by permitting them to represent themselves without the assistance of attorneys. This emergency administration regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 15, 1996.

PAUL E. PATTON, Governor
GEORGE R. WAGONER, Chairman

LABOR CABINET
Kentucky Occupational Safety and Health Review Commission

803 KAR 50:010E. Hearings; procedure, disposition.

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: KRS 338.071, 338.081
EFFECTIVE: May 15, 1996
NECESSITY AND FUNCTION: The Kentucky Occupational Safety and Health Review Commission is authorized by KRS 338.071 and 338.081 to hear and rule on appeals from citations, notifications, and variances and adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings. This regulation is to provide for these hearings and their proper disposition.

Section 1. Definitions. As used herein:

(1) "Act" means the Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) "Commission" means the Kentucky Occupational Safety and Health Review Commission.

(3) "Commissioner" means the Commissioner of the Department of Workplace Standards, Labor Cabinet.

(4) "Executive Director" means the Executive Director of the Review Commission.

(5) "Hearing Officer" means a hearing officer appointed by the commission pursuant to KRS 338.071 and 338.081.

(6) "Affected employee" or "employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.

(7) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with a cited employer and which represents affected employees.

(8) "Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(9) "Citation" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141.

(10) "Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141(1).

(11) "Day" means a calendar day.

(12) "Working day" means all days except Saturdays, Sundays, or federal or state holidays.

(13) "Proceeding" means any proceeding before the commission or before a hearing officer.

(14) Unless otherwise specified, definitions set forth in KRS 338.015 are hereby adopted by this review commission.

Section 2. Meetings. (1) Regular meetings of the commission shall be held in its offices, Frankfort, Kentucky, on the first Tuesday of each month at 11 a.m., unless changed to another date, place, or time by commission action.

(2) Special meetings may be called by the chairman or by two (2) members of the commission, and shall be held at such times and places as the call directs.

(3) The commission shall be considered as in continuous session for the performance of administrative duties.

(4) Two (2) members of the commission shall constitute a quorum.

Section 3. Assignment of Hearing; Filings. (1) Pursuant to KRS 338.081, cases coming before the commission may be assigned to a hearing officer within the discretion of the commission for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment

of the commission. Further, the commission may, upon its own motion or on motion of any party, if granted, hold hearings, as provided under KRS 338.071, in which case provisions of this regulation relating to hearing officers and hearings shall apply where applicable.

(2) A recommended order or adjudication by the hearing officer or the initial order of the Review Commission, if dismissed or disposed of as provided in subsection (1) or if the commission sits for a hearing, shall become the final order of the commission, under the provisions of KRS 338.091, appealable to the Franklin Circuit Court, forty (40) days from date of issue, unless called for further review pursuant to Section 48 of this regulation. In the event of review by the commission, an order of the commission determinative of issues before it shall become a final order as defined in KRS 338.091 upon date of issue.

(3) Prior to the assignment of a case to a hearing officer, all papers shall be filed with the executive director at the commission offices, #4 Millcreek Park, Route #3, Millville Road [~~Airport Bldg., Louisville Road~~], Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer, and before the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice informing of such assignment. Subsequent to a decision of the hearing officer, all papers shall be filed with the executive director.

(4) Unless otherwise ordered, all filing may be accomplished by first-class mail.

(5) Filing is deemed effected at the time of mailing.

Section 4. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) These rules shall govern all proceedings before the commission and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 5. Words Denoting Number or Gender. (1) Words importing the singular number may extend and be applied to the plural and vice versa.

(2) Words importing masculine gender may be applied to feminine or neuter gender and vice versa.

Section 6. Computation of Time. (1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or federal or state holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and federal or state holidays shall be excluded in the computation.

(2) Where service of a pleading or document is by mail pursuant to Section 3 of this regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 7. Extensions of Time. Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

Section 8. Record Address. The initial pleading filed by any person shall contain his name, address, and telephone number. Any change in such information must be communicated promptly to the hearing officer or the commission, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

Section 9. Service and Notice. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(6) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subsection (3) of this section.

(7) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of contest or request for extension or modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)
Your employer has been cited by the Commissioner of the Department of Workplace Standards for violation of the Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its rules of procedure. Notice of intent to participate should be sent to:

Kentucky Occupational Safety
and Health Review Commission
#4 Millcreek Park, Route #3, Millville Road
[~~Airport Bldg., Louisville Road~~]
Frankfort, Kentucky 40601

All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near work place.)

(8) Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted: The reasonableness of the period prescribed by the Commissioner of the Department of Workplace Standards for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(9) The authorized employee representative, if any, shall be served with the notice set forth above and with a copy of the notice of contest.

(10) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(11) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on the authorized employee representative or affected employees in the manner prescribed in subsection (3) of this section, if the employer has not

been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

(12) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in subsection (7) of this section.

(13) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(14) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

Section 10. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

Section 11. Severance. Upon its own motion, or upon motion of any party or intervenor, the commission or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 12. Protection of Trade Secrets and Other Confidential Information. (1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by law, the hearing officer shall issue such orders as may be appropriate to protect the confidentiality of such matters.

(2) Interlocutory appeal from an adverse ruling under this section shall be granted as a matter of right.

Section 13. Employer or Employee Contests. (1) Where a notice of contest is filed by an employer contesting a citation or notification issued pursuant to KRS 338.131, 338.141 or 338.153, an employee or an authorized employee representative may elect party status by a request for intervention at any time before commencement of the hearing or if no hearing is held, within the time period a motion for dismissal is required to be posted.

(2) Where a notice of contest is filed by an employee or by an authorized employee representative contesting a citation or notification issued pursuant to KRS 338.131, 338.141 or 338.153, the employer may elect party status at any time before commencement of the hearing, or if no hearing is held, within the time period a motion for dismissal is required to be posted.

Section 14. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commission or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the commission or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect such intervention by adding to the caption after the name of the respondent the name of the intervenor, followed by the designation "intervenor."

Section 15. Representatives of Parties and Intervenors. (1) Any party or intervenor may appear in person, through an attorney, or through another [~~a~~] representative who is not an attorney.

(2) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

(3) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

(4) In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for himself. A corporation or unincorporated association may be represented by an authorized officer or agent. [~~Nothing contained herein shall be construed to require any representative to be an attorney at law.~~]

(5) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

Section 16. Variance Contests. (1) An employer, employee or authorized employee representative who receives notification of an adverse ruling to an application for a variance made pursuant to KRS 338.153 may, within fifteen (15) working days of issuance of such ruling file a notice of contest with the Commissioner of the Department of Workplace Standards. The Commissioner of the Department of Workplace Standards shall transmit such notice, together with the complete record in the matter as compiled before the Commissioner of the Department of Workplace Standards, to the commission within seven (7) days of receipt, under authority of KRS 338.071(4).

(2) The commission may on its own order or on motion of any party, if granted, consider the matter on the record or may require further hearing or filings of information in the matter.

(3) All pertinent provisions relating to contests of citations, where applicable, shall apply.

Section 17. Request for Extension or Modification of Abatement. (1) Any party adversely affected by a ruling of the Commissioner of the Department of Workplace Standards on any application for extension or modification of an abatement period may file an appeal from such notification with the Commissioner of the Department of Workplace Standards, provided such appeal is filed within fifteen (15) working days from receipt of such notice. Such appeal shall be limited to the commissioner's ruling affecting the party's application for extension or modification of the abatement period.

(2) The Commissioner of the Department of Workplace Standards shall transmit such appeal to the commission within seven (7) days after its receipt, together with all pertinent and relevant records considered by the Commissioner of the Department of Workplace Standards in making his ruling.

(3) The Commissioner of the Department of Workplace Standards shall file a response to such appeal within ten (10) days of receipt of notice of such appeal.

(4) The commission may on its own order or on motion of any party, if granted, consider the matter on the record or may require further hearing, pleading or information in the matter.

Section 18. Form. (1) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 19 of this regulation, which shall include the commission's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

(2) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced.

(3) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief that statements made therein are true, and that it is not interposed for delay.

(4) The commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (1), (2), and (3) of this section.

(5) All pleadings shall be filed in duplicate unless otherwise indicated.

(6) Unless otherwise designated in this regulation, any pleading shall be assumed as admitted as correct unless a reply or denial is received within ten (10) days of receipt of such pleading.

Section 19. Captions. (1) Cases initiated by a notice of contest shall be titled: Commissioner of the Department of Workplace Standards, Complainant v. (Name of Contestant), Respondent.

(2) Cases initiated from an adverse ruling of the Commissioner of the Department of Workplace Standards relative to a variance or by a request for extension or modification of the abatement period shall be titled: (Name of Petitioner), Petitioner v. Commissioner of the Department of Workplace Standards, Respondent.

(3) The titles listed in subsections (1) and (2) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(4) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the commission.

Section 20. Notices of Contest of Citations. (1) Any employer, employee or authorized employee representative may contest any citation issued pursuant to KRS 338.141.

(2) When a notice of contest is received by the commissioner the original and one (1) copy of the notification of contest shall be transmitted to the commission together with copies of all relevant documents, within seven (7) days of receipt of notice by the commissioner.

(3) Complaint.

(a) The commissioner shall file a complaint with the commission no later than twenty (20) days after his receipt of the notice of contest.

(b) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

1. The basis for jurisdiction;

2. The time, location, place, and circumstances of each such alleged violation; and

3. The considerations upon which the period for abatement and the proposed penalty on each alleged violation is based.

(c) Where the commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(4) Answer.

(a) Within fifteen (15) days after service of the complaint, the party against whom the complaint was issued shall file an answer with the commission.

(b) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

Section 21. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 22. Response to Motions. Any party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 23. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the commission or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 24. Withdrawal of Notice of Contest. At any stage of a proceeding, a party may withdraw his notice of contest, subject to the approval of the commission.

Section 25. Prehearing Conference. (1) At any time before a hearing, the commission or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The commission or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 26. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the commission within the time allotted and shall be a part of the record.

Section 27. Discovery Depositions and Interrogatories. (1) Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the commission or the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 28. Failure to Comply With Orders for Discovery. If any party or intervenor fails to comply with an order of the commission or the hearing officer to permit discovery in accordance with the provisions of these rules, the commission or the hearing officer may issue appropriate orders.

Section 29. Issuance of Subpoenas; Petitions to Revoke or Modify Subpoenas; Right to Inspect or Copy Data. (1) Any member of the commission shall, on the application of any party directed to the commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas, if filed subsequent to the assignment of the case to a hearing officer, may be filed with the hearing officer. A hearing officer shall grant the application on behalf of any member of the commission. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(2) Any person served with a subpoena, whether ad testificandum or duces tecum, shall, within five (5) days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The hearing officer or the commission, as the case may be, shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does

not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The hearing officer or the commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and ruling thereon shall become a part of the record.

(3) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payments of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the commission by its counsel shall initiate proceedings in the Franklin Circuit Court or appropriate circuit court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. Neither the commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

Section 30. Notice of Hearing. (1) Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten (10) days in advance of such hearing, except as otherwise provided in Section 52 of this regulation.

(2) Copy of notice of hearing shall be served by the employer on affected employees and/or the affected employees' representative as provided in Section 9(9) and (10) of this regulation, if no information has been received by the employer as to employee intervention in the case before the commission. Notice of hearing will be given by the commission to any party-intervenor.

(3) The executive director shall secure or cause to be secured a location for such hearing, in the discretion of the commission, and secure a reporter for the taking of proof at any hearing.

Section 31. Postponement of Hearing. (1) Postponement of a hearing ordinarily will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three (3) days in advance of the time set for the hearing.

(3) Postponement of hearing not in excess of thirty (30) days may be granted in the discretion of the hearing officer. One (1) additional postponement not in excess of thirty (30) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional postponement may be granted without commission approval.

Section 32. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer and to request commission review pursuant to Section 48 of this regulation.

(2) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing date.

(3) The commission or the hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

Section 33. Payment of Witness Fees and Mileage; Fees of Persons Taking Depositions. Witnesses summoned before the commission or the hearing officer shall be paid the same fees and mileage that are paid witnesses in the courts of the Commonwealth of Kentucky and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the Commonwealth of Kentucky. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Section 34. Reporter's Fees. Reporter's fees shall be borne by the commission, except as provided in Section 33 of this regulation.

Section 35. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of such filing. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed therefor.

Section 36. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the commission, to:

(1) Administer oaths and affirmations;

(2) Issue authorized subpoenas;

(3) Rule upon petitions to revoke subpoenas;

(4) Rule upon offers of proof and receive relevant evidence;

(5) Take or cause depositions to be taken whenever the needs of justice would be served;

(6) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(7) Hold conferences for the settlement or simplification of the issues;

(8) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(9) Call and examine witnesses and to introduce into the record documentary or other evidence;

(10) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(11) Adjourn the hearing as the needs of justice and good administration require;

(12) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the commission.

Section 37. Disqualification of Hearing Officer. (1) A hearing officer may withdraw from a proceeding whenever he deems himself disqualified.

(2) Any party may request the hearing officer at any time following his designation and before the filing of his decision, to withdraw on grounds of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the hearing officer the affidavit referred to in subsection (2) of this section is filed with due diligence and is sufficient on its face, the hearing officer shall forthwith disqualify himself and withdraw from the proceeding.

(4) If the hearing officer does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision and the provisions of Section 47 of this regulation shall thereupon apply.

Section 38. Examination of Witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

Section 39. Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

Section 40. Deposition in Lieu of Oral Testimony; Application; Procedures, Form; Rulings. (1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer"). Such application shall be filed with the commission or the hearing officer, as the case may be, and shall be served on all other parties and intervenors not less than seven (7) days (when the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the commission or the hearing officer shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

(2) Such deposition may be taken before any officer authorized to administer oaths by the laws of Kentucky or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(3) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, or will be unavailable to sign the typed deposition and it is so stated by agreement, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and three (3) copies of the transcript, together with his certificate, in person or by registered mail to the executive director, Kentucky Occupational Safety and Health Review Commission, #4 Millcreek Park, Route #3, Millville Road [~~Airport Bldg., Louisville Road~~], Frankfort, Kentucky 40601.

(4) The hearing officer shall rule upon the admissibility of the deposition or any part thereof.

(5) All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or with due diligence might have been discovered.

(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

Section 41. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 42 of this regulation.

(3) Unless the hearing officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designated for rejected exhibits.

Section 42. Rules of Evidence. Hearings before the commission and its hearing officers insofar as practicable shall be governed by the rules of evidence applicable in the courts of the Commonwealth of Kentucky.

Section 43. Burden of Proof. (1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner.

(2) In proceedings commenced by a request for extension or modification of the abatement period, the burden of establishing the necessity for such extension or modification shall rest with the petitioner.

(3) In all proceedings commenced by appealing from an adverse ruling on a variance application, the burden of proving the inequity of the ruling of the Commissioner of the Department of Workplace Standards shall rest on the petitioner-complainant.

Section 44. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 45. Interlocutory Appeals; Special; as of Right. (1) Unless expressly authorized by these rules, rulings by the hearing officer may not be appealed directly to the commission except by its special permission. Unless otherwise provided by these rules, all such rulings shall become a part of the record.

(2) Request to the commission for special permission to appeal from such ruling shall be filed in writing within five (5) days following receipt of the ruling and shall state briefly the grounds relied on.

(3) Interlocutory appeal from a ruling of the hearing officer shall be allowed as of right where the hearing officer certifies that:

(a) The ruling involves an important question of law concerning which there is substantial ground for difference of opinion; and

(b) An immediate appeal from the ruling will materially expedite the proceedings. Such appeal shall also be allowed in the circumstances set forth in Section 12 of this regulation.

(4) Neither the filing of a petition for interlocutory appeal, nor the granting thereof as provided in subsections (2) and (3) of this section shall stay the proceedings before the hearing officer unless such stay is specifically ordered by the commission.

Section 46. Filing of Briefs and Proposed Findings with the Hearing Officer; Oral Argument at the Hearing. (1) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing officer. The hearing officer may fix a reasonable period of time for such filing, but the initial period shall not exceed thirty (30) days from the receipt by

the party of the transcript of the hearing or the date the hearing officer designates by order of his receipt. The complainant shall have fifteen (15) days to file, the respondent ten (10) days and the complainant five (5) days for reply, unless a shorter period is agreed on by all parties. Intervenors shall have until the 25th day of the thirty (30) day period in which to file briefs.

(2) All briefs must be filed within the time fixed and the hearing officer or the commission may refuse to consider any brief filed thereafter. Application for extension of time to file briefs must be made to the hearing officer or commission before whom hearing was held.

(3) Briefs must be accompanied with notice, showing service upon all other parties, and in addition to the original filed, three (3) copies of each such document shall be furnished to the commission.

Section 47. Decision of Hearing Officers. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order disposing of all issues before him.

(2) The hearing officer shall sign the decision and forward to the executive director. The executive director shall then date and issue such decision, sending a copy to all parties of record and to each commission member. Upon issuance of the recommended order, jurisdiction shall rest solely in the commission, and all motions, petitions and other pleadings filed subsequent to such issuance shall be addressed to the commission.

(3) The recommended order of the hearing officer may be called for further review by any commission member or by the commission as a whole at any time within a forty (40) day period. If the recommended order is not ordered for further review, it shall become the final order of this commission forty (40) days after date of issuance. If a recommended order is called for review by a commissioner or the commission on its own order, parties will be advised in order that briefs may be submitted if desired. The commission will set the briefing time.

Section 48. Discretionary Review; Petition. (1) A party aggrieved by the decision of a hearing officer may submit a petition for discretionary review.

(2) The petition must be received by the commission at its offices in Frankfort, Kentucky on or before the 25th day following receipt by the commission of the hearing officer's decision.

(3) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three (3) copies shall be filed with the commission.

(4) Statements in opposition to petitions for discretionary review may be filed at any time during the review period, if received by the commission on or before the 35th day from date of the issuance of the recommended order. Such statement shall contain a concise statement on each portion of the petition for discretionary review to which it is addressed.

(5) The commission while reviewing a case may request briefs on any point, and shall set the time for such filings.

(6) The original and three (3) copies of all briefs or statements provided for under this section and Section 47 of this regulation shall be furnished for use of the commission.

(7) Failure to act on any petition for discretionary review in the review period shall be deemed a denial thereof.

Section 49. Stay of Final Order. (1) Any party aggrieved by a final order of the commission may, while the matter is within the jurisdiction of the commission, file a motion for a stay.

(2) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(3) The commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

Section 50. Oral Argument Before the Commission. (1) Oral argument before the commission ordinarily will not be allowed.

(2) In the event the commission desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least ten (10) days prior to the date set.

Section 51. Settlement or Dismissals. (1) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order. Such settlement agreement shall detail the basis for such settlement, either by order or a stipulated agreement properly signed by all parties.

(3) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in Section 9 of this regulation. Proof of such service shall accompany the proposed settlement when submitted to the commission or the hearing officer showing such notice to such employees or authorized employee representative ten (10) days before submission to the hearing officer or the commission.

(4) In any action on a citation on motion of either party for dismissal, the motion shall state the reason for such dismissal, and show posting for ten (10) days as required for settlement agreements. In cases where dismissal is moved by the respondent, respondent shall also show abatement of cited violation and payment of any penalty, if applicable.

Section 52. Expedited Proceeding. (1) Upon application of any party or intervenor, or upon his own motion, any commission member may order an expedited proceeding.

(2) When such proceeding is ordered, the executive director shall notify all parties and intervenors.

(3) The hearing officer assigned in an expedited proceeding shall make necessary rulings, with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

Section 53. Standards of Conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the Commonwealth of Kentucky.

Section 54. Ex Parte Communication. (1) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the commission, including any member, officer, employee, or agent of the commission who is employed in the decisional process, and any of the parties or intervenors.

(2) In the event such ex parte communication occurs, the commission or the hearing officer may make such orders or take such action as fairness requires. Upon notice and hearing, the commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Section 55. Restrictions as to Participation by Investigative or Prosecuting Officers. In any proceeding noticed pursuant to the rules in this part, the commissioner shall not participate or advise with respect to the report of the hearing officer or the commission decision.

Section 56. Inspection and Reproduction of Documents. (1) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the commission, inspect and copy any document filed in any proceeding.

(2) Costs shall be borne by such person.

Section 57. Restrictions with Respect to Former Employees. (1) No former employee of the commission or the commissioner (including a member of the commission or the executive director) shall appear before the commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

(2) No former employee of the commission or the commissioner (including a member of the commission or the executive director) shall appear before the commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless one (1) year has elapsed since the termination of such employment.

Section 58. Amendments to Rules. The commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein, in compliance with KRS Chapter 13.

Section 59. Special Circumstances, Waiver of Rules. In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the commission may, upon application by any party or intervenor, or on its own motion, after three (3) days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

Section 60. Penalties. All penalties assessed by the commission are civil.

GEORGE R. WAGONER, Chairman
APPROVED BY AGENCY: May 15, 1996
FILED WITH LRC: May 15, 1996 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Frederick G. Huggins

(1) Type and number of entities affected: All employers in the Commonwealth of Kentucky subject to the provisions of KRS Chapter 338, Occupational safety and health of employees.

(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: The elimination of the need for representation by an attorney in contested occupational safety and health cases will result in a savings of the cost of doing business for Kentucky's employers.

(b) This amendment will reduce the cost of doing business for employers in the Commonwealth of Kentucky through elimination of attorney fees in appearances before the Kentucky Occupational Safety and Health Review Commission.

(c) There will be no effect on compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs. This amendment allows parties and intervenors to represent themselves before the KOSH Review Commission.

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect.

2. Continuing costs or savings: No effect.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No effect.

(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: Continued funding through federal and trust agency state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: Comments from labor, industry, unions and the private sector to date are unanimously supportive of this amendment. The general consensus is that this amendment will impact favorably on all parties appearing before the KOSH Review Commission.

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

(b) Kentucky: All employers in the Commonwealth subject to the provisions of KRS Chaptger 338, Occupational safety and health of employees.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Assistant attorneys general acting as KOSH hearing officers found the language contained in 803 KAR 50:010, Section 15, inadequate to allow parties and intervenors appearing in KOSH proceedings to do so without legal counsel. That agency has agreed that the language as amended will provide proper regulatory authority for eliminating this requirement.

(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 not affect issues of public health and environment.

(b) Failure to implement this amendment will not detrimentally affect environment and public health.

(9) There is no known statute or administrative regulation which may be in conflict, overlapping, or duplication. KBA v. Henry Vogt Machine Co., Inc., Ky.App., 416 s.w.2d 727 (1967), Rule 3.020 of the Kentucky Rules of the Supreme Court, and Kentucky Bar Association ethical opinions U-3, U-15, U-17; U-34, U-35 presented a conflict with existing Section 15 language for assistant attorneys general acting as hearing officers for the Kentucky Occupational Safety and Health Review Commission.

(a) The proposed amendment contains the language used in 29 CFR Section 2200.22(a) of the Federal Occupational Safety and Health Review Commission rules of procedure and eliminates this conflict to the satisfaction of the Attorney General's office which provides hearing officer services for the Kentucky Occupational Safety and Health Review Commission.

(10) 29 CFR 1953.2 requires that any state occupational safety and health plan receiving federal approval and support must be "at least as effective" as the federal Williams-Steiger Occupational Safety and Health Act of 1970. 803 KAR 50:010 Section 15 as amended contains language identical to the relevant section of the Federal Occupational Safety and Health Review Commission rules of procedure, thereby assuring that Kentucky's Occupational Safety and Health Review Commission is at least as effective as the Federal Occupational Safety and Health Review Commission. This amendment will assure that Kentucky's state plan and supporting federal tax dollars are not jeopardized.

(11) TIERING: Is tiering applied? Tiering was not appropriate to this amendment. The amendment effects language necessary to assure continuation of federal funding for Kentucky's occupational safety and health plan.

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. Employees of local government are subject to the provisions of KRS 338 governing occupational safety and health of employees.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates

to hearings and procedures before the Kentucky Occupational Safety and Health Review Commission when citations for alleged violations are issued by the Kentucky Labor Cabinet's Commissioner of Workplace Standards and timely contested by affected employers or employees. The amendment to this regulation allows all parties and intervenors appearing before the KOSH Review Commission to do so without an attorney.

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. Because this amended regulation eliminates the need for legal counsel in appearances before the KOSH Review Commission, some monetary savings should be realized if a contesting local government elects to appear through a nonattorney. In most instances, however, it is likely that the local city attorney would continue to represent local governments in occupational safety and health matters.

Revenues: See above. Unable to project.

Expenditures: See above. Unable to project.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 CFR 1951, Grants for Implementing Approved State Plans; and 29 CFR 2200, Rules of Procedure of the Federal Occupational Safety and Health Review Commission.

2. State compliance standards. This administrative regulation requires that parties appearing before the Kentucky Occupational Safety and Health Review Commission may do so without engaging legal counsel.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires that state programs be as effective as the federal OSH Program. 29 USC 651 et seq.

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. 29 CFR 1953.2 requires that any state occupational safety and health plan receiving federal approval and support must be "at least as effective" as the federal Williams-Steiger Occupational Safety and Health Act of 1970. This amendment assures that Kentucky's Occupational Safety and Health Review Commission is at least as effective as the Federal Occupational Safety and Health Review Commission and assures that Kentucky's entire state plan and supporting federal tax dollars are not jeopardized.

STATEMENT OF EMERGENCY
902 KAR 1:400E

The 1994 regular session of the Kentucky General Assembly enacted KRS Chapter 13B establishing a uniform procedure to be followed in agency administrative hearings. The provisions of KRS Chapter 13B are to be effective July 15, 1996. The Cabinet for Health Services administers public health laws in the Commonwealth, including the food service code, sanitation and food manufacturing rules. This administrative regulation establishes the uniform appeal process for public health programs administered by the cabinet. This administrative regulation is being implemented on an emergency basis to assure the existence of appropriate due process procedures consistent with the requirements of KRS Chapter 13B will be in place at the effected date of the law. An immediate effective date for the regulation will assure the continued ability of the Cabinet for Health Services to administer programs designed to protect the public health while providing those subject to regulatory oversight the due process protections afforded by the provisions of KRS Chapter 13B. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation shall be filed with the Regulations Compiler for the May 15, 1996 filing.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Health Services

902 KAR 1:400E. Administrative hearings.

RELATES TO: KRS Chapter 13B, 211.180, 211.190, 211.210, 211.357, 211.360, 211.760, 211.844, 211.870, 211.925, 211.964, 212.170, 212.210, 212.230, 212.620, 212.627, 216.920, 217.075, 217.126, 217.809, 217.950, 217C.040, 217C.050, 219.031, 219.370, 223.070, 7 CFR Part 246

STATUTORY AUTHORITY: KRS 13B.170, EO 95-79

EFFECTIVE: May 13, 1996

NECESSITY AND FUNCTION: Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Health Services with the Cabinet for Health Services. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. The function of this administrative regulation is to establish, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the Department for Health Services in hearing appeals of actions taken under the public health laws of the Commonwealth.

Section 1. Scheduling the Hearing. (1) The Department for Health Services shall provide the opportunity for a hearing to any regulated entity aggrieved by any action of the Department for Health Services by issuing a notice of proposed action.

(2) The notice of action by the department shall contain:

(a) A description of the proposed action or action taken;

(b) The reasons for the action:

(c) The statutory or regulatory authority by which action is taken; and

(d) An explanation of the right to a conference hearing if requested within ten (10) days of the date of mailing.

Section 2. Conference Hearing. (1) The conference hearing shall be conducted by a representative of the agency taking the action.

(2) During the course of the conference hearing, the appellant may:

(a) Be represented by counsel;

(b) Cross examine witnesses against him; and

(c) Present evidence in his favor.

(3) The purpose of the conference hearing is to:

(a) Clarify the position of the parties; and

(b) To resolve any dispute over the pending action.

Section 3. Conference Hearing Report. (1) Within five (5) days of the conclusion of the conference hearing, the agency representative shall issue a report to the administrative agency detailing any settlement of the action repealed.

(2) The report shall contain the appellant's further right to appeal and a copy of the report shall be mailed to the appellant's last know address.

Section 4. Appeals. (1) The appellant may file an appeal with the Cabinet for Health Services within ten (10) days of receipt of the conference hearing report by mailing a letter of appeal to the Commissioner for Health Services, Department for Health Services,

275 East Main Street, Frankfort, Kentucky 40621.

(2) Upon receipt of an appeal, the commissioner shall set the date, time and place for the hearing requested.

(3) The notice of appeal hearing shall:

(a) Be issued no later than twenty (20) days prior to the date of the appeal hearing; and

(b) Conform to KRS 13B.050.

(4) The appeal hearing shall be conducted by a hearing officer appointed by the secretary and in accordance with KRS 13B.080 and 13B.090.

(5) An official record of the appeal hearing complying with KRS 13B.130 shall be retained by the Cabinet for Health Services.

(6) Within twenty (20) days of the conclusion of the appeal hearing, the hearing officer shall issue a recommended order containing:

(a) Findings of fact;

(b) Conclusions of law; and

(c) A recommendation to the agency head.

(7) A copy of the recommended order shall be sent to each party to the hearing or their counsel.

(8) Each party shall have fifteen (15) days from the date of mailing within which to file exceptions to the recommended order with the secretary.

(9) Within twenty (20) days of the last day on which to receive exceptions, the secretary shall issue a final order complying with the requirements of KRS 13B.120(3).

Section 5. Nothing in this administrative regulation shall be construed to prevent the Department for Health Services from taking emergency action to protect the public health and safety under the provisions of Senate Bill 292, Section 12.

RICE LEACH, MD, Commissioner
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: May 10, 1996
FILED WITH LRC: May 13, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dee Swain, Administrative Regulations Liaison

(1) Type and number of entities affected: This administrative regulation will affect all agencies and individuals who are regulated by the Department for Health Services hearing procedures on proposed actions and actions taken relating to them.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after Notice of Intent is published.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after Notice of Intent is published.

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

1. First year following implementation: No additional factors will be required as a result of this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None, the department is developing one administrative regulation that will establish how hearings will comply with KRS Chapter 13B requirements.

(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:

(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 alternatives are available. KRS Chapter 13B mandates the provisions of 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: This administrative regulation establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. The function of this administrative regulation is to establish, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the Department for Health Services in hearing appeals of actions taken under the pubic health laws of the Commonwealth. In doing so, the department can assure the continued ability to administer programs designed to protect the public health while proving those subject to regulatory oversight the due process protections afforded by the provisions of KRS Chapter 13B.

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

(c) If detrimental effect would result, explain detrimental effect: The detrimental effect would be that the department would be out of compliance with the requirements of KRS Chapter 13B and that there would be no uniform hearing procedures in place for regulated entities.

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

(a) Necessity or 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) This administrative regulation will be used by reference for all administrative regulations promulgated by the Department of Health that are required to meet the compliance requirements of KRS Chapter 13B.

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

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 standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY
902 KAR 14:070E

This emergency administrative regulation, 902 KAR 14:070E, is necessary in order to comply with KRS Chapter 13B and HB 492 enacted by the 1996 General Assembly and the directive of the Administrative Regulations Review Subcommittee as it relates to ambulance providers. This emergency administrative regulation is necessary in order to ensure ambulance providers are licensed in order to protect the public health and safety and to act in a timely manner to:

1. Correct deficiencies found by the Administrative Regulations Review Subcommittee in the current ambulance provider licensing administrative regulation by having new licensing procedures in place for classes of ambulance providers by the July 15, 1996 effective date of the statute;

2. Comply with the requirements of KRS Chapter 13B related to administrative hearings; and

3. Meet the legislative requirements of KRS 216B.042 and 216B.105 mandating the cabinet to regulate health facilities and services.

902 KAR 14:070E meets the requirement in KRS 13A.190 for filing an emergency administrative regulation in order to meet a deadline for the promulgation of an administrative regulation that is established by state law. A Notice of Intent to promulgate an ordinary administrative regulation to replace this emergency administrative regulation will be filed with the Regulations Compiler on or before May 15, 1996.

PAUL E. PATTON, Governor
JOHN MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Health Systems Development

902 KAR 14:070E. License procedures and fee schedule for ambulance providers [~~and tiered response emergency medical services~~].

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS Chapter 13B, 211.952, 216B.042, 216B.105, 216B.410, EO 95-79

EFFECTIVE: May 15, 1996

NECESSITY AND FUNCTION: Executive Order 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 216B.042 and 216B.105 mandate that the Cabinet for Health Services [~~Human Resources~~] regulate health facilities and health services. KRS 211.952 requires the cabinet to establish [~~transfers the responsibility for licensing ambulance providers defined in KRS 211.950 to~~] a single lead agency within the Department for Health Services, with the responsibility for promulgating administrative regulations for licensing, inspecting, and regulating ambulance providers [~~Cabinet for Human Resources~~]. This administrative regulation provides specific requirements for obtaining and maintaining a license to operate an ambulance service [~~or a tiered response emergency medical service~~] and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Advanced life support (ALS)" means [~~an ambulance provider which:~~

~~(a) Utilizes~~] certified and licensed emergency medical professionals who [~~to~~] provide prehospital medical care such as:

(a) [~~1.~~] Basic life support services;

(b) [~~2.~~] Advanced airway management such as endotracheal intubation;

(c) [~~3.~~] Defibrillation; and

(d) [~~4.~~] Administration of intravenous fluids and pharmaceuticals under the authority of a physician medical director[~~; and~~

~~(b) Meets the requirements established in 902 KAR 14:080, Sections 1 through 10 and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:~~

~~1. Are sick, injured, or otherwise incapacitated; and~~

~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being~~].

(2) "Ambulance service" means an ambulance provider as defined in KRS 211.950(2) and 211.952(2)(c)1, 2, 3, and 4. [~~"Air ambulance provider" means a basic life support or ALS air ambulance service which meets the requirements of 902 KAR 14:090 and is licensed by the cabinet to provide basic, advanced, or basic or advanced specialized levels of emergency and non-emergency health care and transportation.~~]

(3) "Basic life support" (BLS) means [~~a basic life support ambulance provider which:~~

~~(a) Utilizes at least two (2)~~] certified or licensed emergency medical personnel who [~~to~~] provide prehospital medical care such as:

(a) [~~1.~~] First aid;

(b) [~~2.~~] Cardiopulmonary resuscitation;

(c) [~~3.~~] Airway management;

(d) [~~4.~~] Cervical spine control;

(e) [~~5.~~] Breathing assistance;

(f) [~~6.~~] Hemorrhage control; and

(g) [~~7.~~] Basic patient movement procedures[~~; and~~

~~(b) Meets the requirements established in 902 KAR 14:080, Sections 1 through 7 and 8, when applicable, and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:~~

~~1. Are sick, injured, or otherwise incapacitated; and~~

~~2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being~~].

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "Licensing agency" means the Cabinet for Health Services [~~Human Resources~~], Department for Health Services.

(6) "Nonemergency health transportation (NEHT)" means an ambulance provider which meets the requirements of 902 KAR 14:060 and is licensed by the cabinet to provide health care transportation on a scheduled basis to individuals whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for emergency medical treatment during transit or emergency medical treatment upon arrival at the final destination. NEHT providers shall not transport a patient who requires basic or advanced life support or a patient who has in place a temporary invasive device or equipment such as an intravenous administration device or airway maintenance device, excluding urinary catheters, or a patient who requires close observation or monitoring preceding or following an invasive technique.

(7) "Specialized ground ambulance provider" means a Class I, Class III, [~~BLS or ALS ground~~] or air ambulance provider which [~~meets the requirements of 902 KAR 14:080, Section 11 or 902 KAR 14:090 and~~] is licensed by the cabinet to provide health care and

transportation on an emergency or nonemergency scheduled basis that:

(a) May be unavailable to the general public; and

(b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:

1. Equipment requirements;
2. Personnel requirements; or
3. Hours of operation.

[~~(8) "Tiered response emergency medical (TREM) services" means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance provider through a written agreement for operation within a specific geographic service area.~~]

Section 2. Licenses. (1) A person shall not establish a BLS or ALS ground ambulance service, BLS or ALS air ambulance service, or NEHT ambulance service[~~, or a TREM service~~] in Kentucky without first obtaining a certificate of need [~~from the Kentucky Health Policy Board (referred to as the board)~~] and shall not operate a BLS or ALS air or ground ambulance service, or NEHT ambulance service[~~, or TREMS~~] without first obtaining a Kentucky Ambulance License, Form EMS-2 (12/94), incorporated by reference, from the licensing agency.

(2) Effective July 15, 1996, the licensing agency shall not license a new BLS or ALS ground ambulance service.

(3) Effective December 31, 1996, the licensing agency shall not license a new NEHT service.

(4) Effective July 15, 1996, the following classes of ambulance providers shall be licensed: Class I, Class II, Class III, Air, or NEHT. A person shall not establish a Class I, Class II, Class III, or air ambulance service in Kentucky without first obtaining a certificate of need and shall not operate a Class I, Class II, Class III, or air ambulance service without first obtaining a Kentucky Ambulance License, Form EMS-2 (6/96), incorporated by reference, from the licensing agency.

(5) [~~(2)~~] The license shall be conspicuously posted in a public area of the facility.

(6) An ambulance provider shall file an application with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621 in accordance with the following schedule:

(a) An ambulance provider licensed prior to July 15, 1996 shall file [~~(3)~~] a "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (10/94), incorporated by reference.

(b) An ambulance provider licensed after July 15, 1996 shall file a "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (6/96), incorporated by reference.

(c) An ambulance provider licensed as a NEHT service prior to December 31, 1996 shall file [~~or~~] an "Application for License to Operate a Nonemergency Health Transportation Service," Form EMS-1N (12-94), incorporated by reference[~~, shall be filed with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621~~].

(7) [~~(4)~~] An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with applicable administrative regulations under 902 KAR Chapter 14.

(8) [~~(5)~~] The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency [~~and the board~~], unless otherwise exempted by statute:

(9) [~~(6)~~] The licensee shall maintain and submit completed reports required by:

(a) KRS 216B.410;

(b) 902 KAR 14:080 [~~14:040~~], Section 3(2)(a);

(c) 902 KAR 14:082 [~~14:050, Section 6~~];

(d) 902 KAR 14:084; or

(e) 902 KAR 14:090, Section 9; and

(f) The licensing agency[~~; or~~

~~(e) The Kentucky Health Policy Board~~].

(10) [~~(7)~~] A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(11) [~~(8)~~] A license may be renewed upon payment of the prescribed fee and compliance with the provisions for licensing.

(12) [~~(9)~~] A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances named in the application, and shall not be transferable.

(13) [~~(10)~~] A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of an existing facility, capital stock, or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.

(14) [~~(11)~~] Upon filing a new application for a license due to change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee shall be charged for the remainder of the licensure period.

(15) [~~(12)~~] There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

(a) A person having direct or indirect ownership interest of ten (10) percent or more in the service;

(b) Officers and directors of the corporation, if a service is organized as a corporation; and

(c) Partners, if a provider is organized as a partnership.

Section 3. Licensing Inspections. (1) Compliance with licensing administrative regulations may [~~shall~~] be ascertained through on-site inspections of the provider by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during an inspection [~~the inspections~~] shall be transmitted in writing to the provider by the licensing agency.

(4)(a) The provider shall submit a written plan for the elimination or correction of the regulatory violations to the licensing agency within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5)(a) Following a review of the plan, the licensing agency shall notify the provider in writing of the acceptability of the plan. The licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable, the licensing agency shall specify the reasons for the unacceptability. The provider shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted on complaint allegations, follow-up visits, and [~~annual~~] relicensing inspections. Inspections shall be conducted utilizing the procedures outlined under this section.

(7) The licensing agency may deny, revoke, modify, or suspend the license of a provider which:

(a) Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Fails to eliminate or correct regulatory violations;

(c) Falsifies an application for licensing;

(d) Tampers with, alters, or changes a license issued by the licensing agency;

(e) Attempts to obtain or obtains a license by fraud, forgery, deception, misrepresentation, or subterfuge;

(f) Provides false or misleading advertising;

(g) Falsifies, or causes to be falsified, a patient record or ambulance run report;

(h) Provides an unauthorized level of service;

(i) Has a history of staff violations which have resulted in

disciplinary action under 902 KAR 13:020 and 13:090;

(j) Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

1. KRS 211.950 to 211.958;
2. KRS 211.960 to 211.968;
3. KRS 211.990(5); [~~and~~]
4. KRS 216B; and
5. KRS 311.654; or

(k) Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in Section 4 of this administrative regulation.

(8) The licensing agency may issue an order directing a provider to immediately cease and desist operating an ambulance, or providing services, if the licensing agency has reasonable cause to believe that an ambulance or service is unsafe or is being operated in an unsafe or unprofessional manner that is likely to cause harm or create imminent danger to the health and safety of the public.

(9) The licensing agency or the board may deny, revoke, modify, or suspend the license of an ambulance provider if an owner of the service is convicted of obtaining a fee by:

1. Fraud or misrepresentation; or
2. Submitting fraudulent or misleading claims for reimbursement to individuals, private insurance companies, or governmental agencies;

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with the provisions [~~:~~
~~1. Policies and administrative regulations of the board; and~~
~~2. Provisions~~] of KRS 216B.105.

Section 4. Fee Schedule. The annual licensing fee, including renewals, shall be as follows:

(1) Nonvolunteer ambulance providers [~~and TREM service~~]: eighty (80) dollars;

(2) Volunteer ambulance providers [~~and TREM service~~] in which a majority of the ambulance runs are made by attendants who do not receive compensation for their work: twenty (20) dollars.

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) Kentucky Ambulance License, Form EMS-2 (12/94).

(2) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (10/94).

(3) Application for License to Operate a Nonemergency Health Transportation Service, Form EMS-1N (12/94).

(4) Kentucky Ambulance License, Form EMS-2 (6/96).

(5) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (6/96).

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: May 13, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 300 ground and air ambulance providers and approximately 10 nonemergency health transportation 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. Since this is an emergency administrative regulation, a public hearing has not been held. However, this administrative regulation will have no effect on the cost of living in the 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. Since this is an emergency administrative regulation, a public hearing has not been held. However, this administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this administrative regulation.
2. Second and subsequent years: None

(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: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will continue existing licensing fees for ambulance providers. There will be no additional effect on state or local revenues due to the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ambulance providers and nonemergency health care transportation services. This fee income and general funds will be utilized for implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative changes made in House Bill 492 by the 1996 General Assembly and signed by the Governor to establish classes of ambulance providers and also complies with the requirements of KRS Chapter 13B related to administrative hearings. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services provided in Kentucky.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Without this administrative regulation ambulance providers in Kentucky would not be regulated and there would be no standards for prehospital care that could be enforced. The would have a detrimental effect on the public's health.

(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: The purpose of this administrative regulation is to comply with the requirements of HB 492 as passed by the 1996 General Assembly and KRS Chapter 13B.

(11) TIERING: Is tiering applied? Yes. Tiering was applied because there are five (5) levels of ambulance providers: Air, Class I, Class II, Class III, and NEHT ambulance providers. There are separate requirements and standards for each level of service. In addition, special variances may be allowed for Specialized Services. The licensing fee is lower for voluntary service than for paid services.

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 local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely establishes classes of ambulance providers as required by HB 492 and a uniform administrative hearing procedure in accordance with KRS Chapter 13B.

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.

STATEMENT OF EMERGENCY
902 KAR 17:021E

The provision of House Bill 250 codified at KRS 216B.040 transferred the authority for the State Health Plan process and procedures from the Cabinet for Human Resources to the Kentucky Health Policy Board effective July 15, 1994. This emergency administrative regulation repeals 902 KAR 17:020, State Health Plan process which is outdated and obsolete. The administrative regulation to be repealed contains the same subject matter as 909 KAR 1:021, State Health Plan. This emergency administrative regulation will not be replaced by an ordinary regulation pursuant to KRS Chapter 13A.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Office of Personnel and Budget

902 KAR 17:021E. Repeal of 902 KAR 17:020.

RELATES TO: KRS 194.030(14), 216B.040
STATUTORY AUTHORITY: KRS 194.050(1)
EFFECTIVE: April 30, 1996

NECESSITY AND FUNCTION: The emergency administrative regulation repeals 902 KAR 17:020. This administrative regulation is no longer required since KRS 216B.040 removes the authority to promulgate an administrative regulation for the State Health Plan and the plan's process or procedures from the Cabinet for Health Services. This repeal is necessary to delete 902 KAR 17:020 which is obsolete and contains substantially similar subject matter related to the State Health Plan process which is now contained in 909 KAR 1:021.

Section 1. 902 KAR 17:020, State Health Plan process, is hereby repealed.

MARCIA MORGAN, Executive Director
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: April 17, 1996
FILED WITH LRC: April 30, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle, Chief Internal Policy Analyst

(1) Type and number of entities affected: None

(2) Direct and indirect cost or savings to those affected:

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or governmental

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? This is a repeal administrative regulation only.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being promulgated to show that hospitals have five (5) months rather than three (3) months after the close of the facility's fiscal year to file cost reports, and to show that rate setting shall be done using the cost reports available as of November 1 preceding the rate year. This administrative regulation also contains material implementing payment rate changes relating to disproportionate share hospital payments promulgated by previous emergency regulations. This action must be taken on an emergency basis to ensure that access to health care services is maintained by establishing a process which allows for greater accuracy in rate setting. 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 regulation filed on September 28, 1995 because this emergency administrative regulation has been rewritten to correct a misperception with regard to reimbursement policy for psychiatric hospitals and reformatted to comply with KRS Chapter 13A drafting requirements. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

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

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

STATUTORY AUTHORITY: KRS 194.050, 205.460, [~~1992 Ky. Acts ch. 462, Part I.G.52.b.2.,~~] 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4, EO 95-79

EFFECTIVE: May 13, 1996

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of medical assistance~~]. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program [~~cabinet~~] for hospital inpatient services.

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

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

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

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

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

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

(6) "Department" means the Department for Medicaid Services.

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

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

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

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

(9) "Exceptionally high costs or long lengths of stay" means for newborns, those costs and days of stay in:

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

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

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

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

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

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

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

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

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

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

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

(19) "Type III hospital status" means those in-state disproportionate share state university teaching hospitals that have requested a Type III status which has been approved by the Department for Medicaid Services.

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

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

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

(23) "Upper payment limit" means the maximum amount the Medicaid Program will pay for an inpatient day of care under specified circumstances; upper payment limits may vary based on factors, such as utilization factors, teaching hospital status, and age of the patient.

Section 2. Acute Care Hospital, Rehabilitation Hospital and [~~Mental Hospital (Including~~] Psychiatric Hospital [~~Facility)~~] Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medicaid [~~medical assistance~~] through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

[~~Section 2. Establishment of Payment Rates. (1) The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised November 29, 1993, which is incorporated by reference in this administrative regulation.~~

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

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

Section 3. [~~General Description of the Payment System. The following provisions shall be applicable for purposes of setting inpatient hospital payment rates: (1)~~] Use of Prospective Rates. (1) Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.

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

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

(c) [~~For universal rate years beginning on or after January 1, 1985,~~] The prospective rate shall not be subject to retroactive adjustment, except for [~~to the extent that~~] facilities with a rate based on unaudited data. These facilities shall have their rate appropriately revised for the rate year when the audited cost report for the base year is received from the fiscal intermediary or an independent audit firm under contract with the department.

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

(2) [~~(e)~~] Overpayments shall be recouped by:

(a) [~~1. By~~] Payment from the provider of the amount of the overpayment; or

(b) [~~2. by~~] The withholding of the overpayment amount from future payments due the provider.

Section 4. [~~(2)~~] Use of a Universal [~~uniform~~] Rate Year. (1) A universal [~~uniform~~] rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The most recent Medicaid cost report available as of November 1 of each year preceding the rate year shall be used for rate setting. [~~The first uniform rate year for psychiatric hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the psychiatric hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of~~]

(2) Policy changes shall not change the rate year, although the facility rates may change.

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

Section 5. [~~(3)~~] Trending of Cost Reports. The following policies shall be used for the trending of cost reports.

(1) Allowable Medicaid cost, excluding capital cost, as shown in cost reports on file in the department [~~cabinet~~], both audited and unaudited, shall be trended to the beginning of the rate year in order [~~so as~~] to update a facility's Medicaid costs. [~~When trending, capital costs and return on equity capital are excluded.~~]

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

Section 6. [~~(4)~~] Indexing for Inflation. (1) After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied in order [~~so as~~] to project inflationary cost in the universal [~~uniform~~] rate year.

(2) The [~~forecasting~~] indexing factor to be used shall be the inflation factor [~~currently in use is~~] prepared by DRI for the rate year. [~~Data Resources, Inc. This policy shall be effective August 3, 1985.~~]

Section 7. [~~(5)~~] Peer grouping. For rate setting purposes, hospitals shall be grouped with other hospitals in accordance with the following provisions: [~~Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be grouped with other acute care hospitals according to bed size (referred to as "peer grouping").~~]

(1) The peer groupings shall be based on the number of beds licensed as acute, acute rehabilitative, comprehensive physical rehabilitative, pediatric orthopedic, psychiatric rehabilitative, psychiatric, psychiatric adolescent, psychiatric adult rehabilitative, and tuberculin beds pursuant to KRS Chapter 216B on November 1 preceding the rate year.

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

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

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

(4) [~~(d)~~] Psychiatric hospitals shall not be peer grouped but shall be in [~~have~~] a separate array of psychiatric hospitals only.

(5) [~~(e)~~] Rehabilitation hospitals and acute care hospitals providing only rehabilitation services [~~considered to be primarily rehabilitative in nature~~] shall not be peer grouped, [~~or~~] arrayed, or subject to the operating cost upper limits.

Section 8 [~~(6) Use of a~~] Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if the following minimum

occupancy factors are not met. [~~A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid Program.~~]

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

(2) A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. [~~Capital costs are interest and depreciation related to plant and equipment.~~]

Section 9. [~~(7) Use of a~~] Reduced Depreciation Allowance. Reduced depreciation allowance shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding [~~not including~~] major movable equipment, [~~)~~] shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

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

Section 10. [~~(8) Use of~~] Upper Limits and Payment Principles. [~~with regard to services provided on or after November 29, 1993.~~

~~(a)~~] The following upper limits and payment principles shall apply to all hospitals with other additional limitations for disproportionate share hospitals are shown in Section 11 of this administrative regulation. [~~paragraph (b) of this subsection.~~]

(1) [~~1.a.(i)~~] For acute care hospitals with 101 beds and up, [~~except hospitals with 100 beds or less,~~] an upper limit shall be established on all costs (except Medicaid capital cost and professional component cost) at the weighted median per diem cost for hospitals in each peer group[~~, using the most recent medicaid cost report available as of December 1 of each year~~].

(2) [~~(ii)~~] For acute care hospitals with 100 beds or less, the upper limit on all costs (except Medicaid capital cost and professional component cost) shall be established at 110 percent of the weighted median per diem for hospitals in the peer groups[~~, using the most recent Medicaid cost report available as of December 1 of each year~~].

(3) [~~b.~~] For psychiatric hospitals:

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

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

(c) The projected cost may be adjusted for usual cost of living increases using the DRI [~~Data Resources, Incorporated~~] Index.

(4) After [~~c. Upon~~] being set, the arrays and upper limits shall not be altered due to revisions or corrections of data. [~~; however~~] The arrays or upper limits may be changed as a result of changes of agency policy.

(5) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.

[~~d. Disproportionate share hospitals shall also receive, in addition to regular program payments, disproportionate share hospital payments as described in the Reimbursement Manual at Section 102C.~~]

(6) [~~e.~~] Provider taxes shall be considered allowable cost with that portion attributable to Medicaid utilization included in the per diem rates. [~~For the rate period beginning November 29, 1993, the allowable cost of the tax shall be added to the hospital rate with no offsets and without regard for usual upper limits. For subsequent rate periods the cost (excluding, effective March 1, 1994, any per diem rate adjustments for the prior rate period relating to provider taxes) shall be shown in the appropriate cost report with adjustment as necessary to reflect an annual amount.~~]

(7) The following controls shall be applied to the per diem rate increases for acute care hospitals except for those providing only rehabilitation services.

(a) [~~f.~~] Allowable rate [~~cost~~] growth from the prior rate [~~base~~] year to the new rate [~~base~~] year shall be limited to not more than one and one-half (1 1/2) times the DRI [~~Data Resources, Inc.~~] inflation amount for the same time period.

(b) Limits shall be applied to the [~~by component (~~]capital and operating cost per diem component only. [~~); cost~~]

(c) Rate growth beyond the allowable amounts shall be considered unallowable cost for rate setting purposes.

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(8) [~~2.~~] For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay [~~(defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission)~~], the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

Section 11. Disproportionate Share Hospitals. [~~(b)~~] The following upper limits and payment principles shall apply to disproportionate share hospitals [~~as defined in subsection (9) of this section~~].

(1) [~~1.~~] Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in that peer grouping [~~the array~~]. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) [~~(~~]as shown in subsection (6) [~~(9)(b)2~~] of this section[~~). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual~~]. (2) [~~2.~~] Designated state teaching hospitals owned or operated by a university [~~and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville)~~] shall have an upper limit set at 126 percent of the weighted median per diem cost for [~~all other~~] hospitals of [~~comparable size (~~]401 beds and up[~~)~~]. Designated state pediatric teaching hospitals shall have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group.

(a) The designated state pediatric teaching hospitals shall also be paid, in addition to the facility's [~~facilities'~~] base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. [~~In addition to the per diem amount computed using the limits specified in this subparagraph, the~~]

(b) Hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) [~~(~~]as shown in subsection (6) [~~(9)(b)2~~] of this section[~~). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual~~].

(3) [~~3.~~] Psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. [~~The hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.~~]

(4) Acute care hospitals with 100 beds or less shall have an upper limit set at 110 percent of the weighted median per diem for hospitals in the array.

(5) [~~4.~~] All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost

for hospitals in the peer grouping. [~~array. In addition to the per diem amount computed in this manner, the~~] Hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) [~~(~~]as shown in subsection (6) [~~(9)(b)2~~] of this section[~~). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual~~].

(6) The disproportionate share hospital payments shall be made as follows:

(a) The disproportionate share hospital payments for Type I and Type II hospitals shall include a volume adjustment.

1. The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate.

2. Total disproportionate share volume adjustment payments to Type I and Type II hospitals for indigent care services provided during the 1996 fiscal year shall not exceed $86,500,000; all hospitals' volume adjustment amounts shall be adjusted proportionately, if payments will cause the limit to be exceeded.

3. The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

(b) The disproportionate share hospital payments for Type III and IV hospitals shall be equal to 100 percent of the cost of services to Medicaid patients, less the amount paid by Medicaid as usual Medicaid per diem payments, plus the cost of services to uninsured patients, less any cash payments made by the uninsured patients. Type III status shall be granted to a state teaching hospital if the hospital agrees as a part of its request for a Type III status to forego any local or state government contributions for charity care and to provide up to 100 percent of the state matching funds necessary to secure federal financial participation for Medicaid disproportionate share hospital payments to be made during the period of time the hospital is designated as a Type III status hospital.

(c) The disproportionate share hospital payments for Type V hospitals shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

(7) Medically necessary hospital inpatient services provided by all in-state disproportionate share hospitals to children under the age of six (6) with exceptionally high costs or long lengths of stay, after thirty (30) days from the date of admission or the mother's discharge, the payment rate shall be set at 110 percent of the per diem payment rate. These payments apply without regard to length of stay or number of admissions of the child.

[~~(9) Disproportionate share hospitals.~~

~~(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r 4(b) and (d) and those hospitals which may not meet the criteria but meet the criteria specified in 42 USC 1396r 4(d) and meet this additional criteria:~~

~~1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and psychiatric hospitals with Medicaid utilization of thirty five (35) percent or higher;~~

~~2. Hospitals which are designated state teaching hospitals;~~

~~3. Hospitals which are designated major pediatric teaching hospitals;~~

~~4. Hospitals having twenty five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and~~

~~5. Effective with regard to services provided on or after July 1, 1990, Hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one half (1/2) of one (1) percent or higher.~~

~~(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r 4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:~~

~~1. For the period ending June 30, 1994, the following policy shall be in effect:~~

~~a. Each disproportionate share hospital shall be paid a minimum disproportionate share payment amount for the type of hospital plus any earned adjustment to which the hospital is entitled. The hospital types, minimum payment amounts, and earned adjustments shall be as follows and shall only remain in effect for the period ending June 30, 1994:~~

~~(i) Type I hospitals shall be those acute care and psychiatric in-state hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund, when the hospital has fifty (50) beds or less. Minimum amount: ninety five (95) dollars per Medicaid day.~~

~~(ii) Type II. These hospitals shall be described in the same manner as Type I, except these hospitals have fifty one (51) beds to 100 beds. Minimum amount: seventy (70) dollars per Medicaid day.~~

~~(iii) Type III. These hospitals shall be described in the same manner as Type I except these hospitals have 101 beds to 200 beds and include rehabilitation hospitals. Minimum amount: fifty five (55) dollars per Medicaid day.~~

~~(iv) Type IV. These hospitals shall be described in the same manner as Type I except these hospitals have 201 or over beds and include rehabilitation hospitals. Minimum amount: forty five (45) dollars per Medicaid day.~~

~~(v) Type V. All acute care and psychiatric in state hospitals with 100 beds and under except those described as Type I or II. Minimum amount: forty five (45) dollars per Medicaid day.~~

~~(vi) Type VI. All acute care, rehabilitation and psychiatric in state hospitals with 101 beds to 200 beds except those that are Type III. Minimum amount: thirty five (35) dollars per Medicaid day.~~

~~(vii) Type VII. These hospitals shall be described in the same manner as Type I, except the type shall be limited to rehabilitation hospitals. Minimum amount: ninety five (95) dollars per Medicaid day.~~

~~(viii) Type VIII. These hospitals shall be described in the same manner as Type II, except the type shall be limited to rehabilitation hospitals. Minimum amount: seventy (70) dollars per Medicaid day.~~

~~(ix) Type IX. All rehabilitation hospitals, with 100 beds and under except those described as Type VII or VIII. Minimum amount: forty five (45) dollars per Medicaid day.~~

~~(x) Type X. All other in state hospitals. Minimum amount: ten (10) dollars per Medicaid day.~~

~~(xi) Type XI. All out of state hospitals. Minimum amount: one (1) dollar per Medicaid day.~~

~~b.(i) Each Type I through Type X hospital shall have the opportunity for an earned payment adjustment based on the provision of indigent care (i.e., care provided to Medicaid recipients beyond the Medicaid covered days or to individuals or families with income under the poverty level).~~

~~(ii) For the period of July 1, 1993 through June 30, 1994, the earned adjustment shall equal ten (10) dollars for each indigent day of care provided plus an amount equal to the cost of the indigent care (at Medicaid rates) provided by the hospital for which there has been no direct or indirect payment (i.e., where the cost of the care has not been paid or cost shifted to other payors) with an adjustment to account for outpatient services so the total indigent care per diem rate shall be up to but not in excess of 140 percent of the Medicaid per diem rate.~~

~~(iii) A hospital shall be presumed to have received payment for indigent care to the extent that other patient revenues exceed other~~

~~patient costs, and to the extent that direct or other indirect payments are made to the hospital for the indigent care.~~

~~(iv) A one (1) time disproportionate share payment shall be paid as appropriate for the period of June 15, 1994 through June 30, 1994 to those hospitals qualifying under the following formula:~~

~~i. The amount of disproportionate share indigent care payments earned by the hospital using the formula in effect during the period of July 1, 1993 through June 30, 1994 shall be compared to an amount which is derived by computing the amount of earnings that would have been realized during the period of July 1, 1993 through June 30, 1994 using the revised formula taking effect on July 1, 1994 (shown in subparagraph 2 of this paragraph); the one (1) time payment amount shall be the amount (if any) by which the amount derived by using the formula effective July 1, 1994 exceeds the actual amount earned under the formula which was in effect; and~~

~~ii. If the one (1) time payments would cause the total of all disproportionate share payments to exceed $81,000,000 for the period of July 1, 1993 through June 30, 1994, all one (1) time payments shall be reduced proportionately so the total amounts of disproportionate share payments for the period of July 1, 1993 through June 30, 1994 shall equal but not exceed $81,000,000.~~

~~(v) Any acute care disproportionate share hospital with 100 beds or less whose July 1, 1993, or January 1, 1994, per diem payment rate is less than the April 1, 1993 rate paid as of June 30, 1993, and also less than full allowable per diem costs for the services provided by the hospital as of July 1, 1993, or January 1, 1994, respectively, shall receive an adjustment to the hospital's disproportionate share minimum payment for the period March 1, 1994 through June 30, 1994. The payment adjustment for an acute care hospital shall be determined by multiplying the number of the hospital's Medicaid days as follows:~~

~~i. For services provided for the July 1, 1993 through December 31, 1993 period by the difference between the hospital's July 1, 1993 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost; and~~

~~ii. For services provided for the January 1, 1994 through June 30, 1994 period by the difference between the hospital's January 1, 1994 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost.~~

~~(vi) Any acute care or psychiatric disproportionate share hospital of 100 beds or less shall receive an additional disproportionate share hospital payment of $200,000 for the period March 1, 1994 through June 30, 1994. This payment shall be made in two (2) equal installments of $100,000 each with the first payment amount to be paid on or before March 31, 1994 and the second payment amount to be paid on or before June 30, 1994.~~

~~c. Each Type XI hospital shall qualify for an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.~~

~~2. The disproportionate share hospital payments for the period beginning July 1, 1994 and thereafter shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate (except that total disproportionate share payments for indigent care services provided during the 1995 fiscal year shall not exceed $81,000,000; if payments will cause the limits to be exceeded, all hospitals' earned amounts shall be adjusted proportionately). The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.~~

~~3. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.~~

~~(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.~~

~~(11) Hospitals whose general characteristics are not those of an acute care or psychiatric hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.~~

~~(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.~~]

Section 12. In-state Nondisproportionate Share Hospitals. In-state nondisproportionate share hospitals shall be compensated in the manner described in Section 11(5)(a) of this administrative regulation for services provided by the hospital to Medicaid recipients beyond the covered days and to individuals and families with total annual incomes and resources up to 100 percent of the federal poverty level, except for nonemergency care rendered through a hospital emergency room, in accordance with KRS 205.640.

Section 13. [~~4.~~] Payments to Participating Out-of-state Hospitals. (1) [~~Effective with regard to services provided on or after July 1, 1990~~] Participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) [~~Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission,~~] Participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) in any hospital; and children under age six (6) in disproportionate share hospitals, without regard to length of stay or number of admissions of the infants and children.

(3) [~~Effective with regard to services provided on or after February 1, 1991,~~] Professional costs [~~(i.e., physician fees)~~] for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 14. Material Incorporated by Reference. (1) The "Medicaid Reimbursement Manual for Hospital Inpatient Services" dated September 1995 shall be incorporated by reference in this administrative regulation.

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

(3) The Medicaid Reimbursement Manual for Hospital Inpatient Services shall be on file in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621.

(4) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(5) 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 15. Appeal Rights. As specified in the Medicaid Reimbursement Manual for Hospital Inpatient Hospital Services, negative actions may be appealed in accordance with 907 KAR 1:671.

Section 16. [5.] Except as otherwise specified the changes shown in this administrative regulation shall be applicable [effective] with regard to services provided on or after March 8, 1996 [November 29, 1993].

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: May 7, 1996
FILED WITH LRC: May 13, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All hospitals 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: Considered budget neutral.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal 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 continued access to hospital inpatient 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: May pose an imminent threat to the public health, safety, or 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

STATEMENT OF EMERGENCY
907 KAR 1:034E

This emergency administrative regulation is being amended to comply with KRS 605.115 to permit local school districts to participate

through the Department of Education as Medicaid providers and receive reimbursement for health related services identified in the child's individual education plan when provided to Medicaid eligible recipients. This action must be taken on an emergency basis to ensure that access to medically necessary health care services are available to Medicaid 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 shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

907 KAR 1:034E. Early and periodic screening, diagnosis, and treatment services.

RELATES TO: KRS 205.520, 605.115
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.50 through 441.62, 42 USC 1396d, EO 95-79
EFFECTIVE: May 13, 1996
NECESSITY AND FUNCTION: The Cabinet for Health Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medical Assistance in accordance with Title XIX of the Social Security Act~~]. 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 Medicaid [~~medical assistance~~] to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to the early and periodic screening, diagnosis, and treatment services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both categorically needy and medically needy children under age twenty-one (21).

Section 1. Definition. (1) "By report" service or item means any service for which a maximum allowance has not been established because the item is rarely billed to the Kentucky Medicaid Program or because the service is unusual, variable, or new.

(2) "Department" means the Department for Medicaid Services or its designated agency.

(3) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(4) [~~For the purpose of this administrative regulation,~~] "Periodicity" means the frequency with which an individual may be screened or rescreened.

(5) "Recipient" means a Medicaid eligible child under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(6) "Screening" means the review of the health and health-related conditions of a recipient by a health care professional to determine if any further diagnosis or treatment is needed.

(7) "Services" means health care, treatment, procedures, supplies, items, or equipment.

Section 2. Screening Provider Participation Requirements. Any health care provider meeting the requirements set forth below may be eligible to participate in the [~~Kentucky Medical Assistance (~~]Medicaid[~~)~~] Program as a screening provider:

(1) A physician shall be [~~duly~~] licensed in the state of Kentucky;

(2) Any early and periodic screening clinic or other organization qualified to provide screening services, including local health departments, shall be under the direction of a [~~duly~~] licensed physician or registered professional nurse currently licensed by the state of Kentucky who shall be responsible for assuring that the requirements of participation are met and that the procedure established by the Medicaid Program are carried out;

(3) Screening clinics conducted under the direction of a registered professional nurse shall have a [~~duly~~] licensed physician acting as medical consultant; and

(4) Screening examinations and tests performed by licensed professional staff, or supportive staff under the direct supervision of the [~~such~~] licensed professional, shall be in accordance with the professional practice standards for the profession. [~~practices act.~~]

Section 3. Screening. EPSDT screening services shall be directed toward the early detection of diseases and abnormalities. The services shall be appropriate for the age and health history of the recipient [~~child~~]. These services include[~~, but are not necessarily limited to, the following~~]:

(1) An initial, periodic, or additional health assessment of a recipient provided in accordance with Sections 2 and 5 of this administrative regulation which includes the following:

(a) [~~(1)~~] Health and development history;

(b) [~~(2)~~] Unclothed physical examination;

(c) [~~(3)~~] Development assessment;

(d) Assessment and provision of [~~(4)~~] immunizations as [~~which are~~] appropriate for age and health history;

(e) [~~(5)~~] Assessment of nutritional status;

(f) [~~(6)~~] Vision testing;

(g) [~~(7)~~] Hearing testing;

(h) [~~(8)~~] Laboratory procedures appropriate for age and population groups;

(i) Direct referral for dental services for diagnosis and treatment [~~(9)~~] for children three (3) years of age and over[~~, dental services furnished by direct referral to a dentist for diagnosis and treatment~~];

(j) Anticipatory guidance and health education; or

(2) A health assessment examination, or evaluation of a recipient by a licensed or certified health care professional acting within his scope of practice, at intervals other than those specified in Section 5 of this administrative regulation indicated by medical necessity, to determine the existence of defects, physical or mental illnesses, or conditions; or

(3) Any other recipient encounter with a licensed or certified health care professional that results in the determination of the existence of a suspected:

(a) Defect;

(b) Illness;

(c) Medical condition; or

(d) A change or complication in a medical condition.

Section 4. Immunizations. Each screening [~~clinic~~] provider participating in accordance with Section 2(1), (2), and (3) of this administrative regulation shall be required to make available, at the time of screening, immunizations appropriate for age and health history of the recipient being screened.

Section 5. Periodicity Schedule. The periodicity schedule shall define the age appropriate services and time frames for screenings. The periodicity schedule shall be recommended by the Department for Public Health and approved by the Department for Medicaid Services. Additional medical and dental assessments shall be provided when medically indicated.

Section 6. [~~5.~~] Diagnosis and Treatment. If[~~, as a result of screening,~~] referral for additional service is indicated as a result of a screening or any other encounter with a licensed or certified health care professional acting within the scope of his practice, further diagnosis and medical treatment services shall be [~~provided for any~~

~~service which is considered a~~] covered if they are: [~~service under the Medical Assistance Program.~~]

(1) Otherwise covered by the Medicaid Program; and:

(a) Limited to persons under the age of twenty-one (21); or

(b) Not limited with regard to the age of the recipient; or

(2) Otherwise covered by the Medicaid Program, meet the standard for prior authorization and medical necessity as specified in Section 9 of this administrative regulation; and

(a) Limited to persons twenty-one (21) years of age or older; or

(b) Limited in ways unrelated to age; or

(3) Not otherwise covered by the Medicaid Program and meet the requirements for EPSDT special services as provided for in Section 7 of this administrative regulation.

[~~Section 6. Periodicity Limitations. Each eligible recipient may be screened or rescreened within the time frames shown on the periodicity schedule, with additional medical and dental assessments permitted when medically indicated.~~

~~Periodicity Schedule~~
~~(Effective for Services Provided on or After March 15, 1989)~~

~~Age:~~	~~Medical~~	~~Dental~~
	~~2-4 weeks~~	
	~~2-3 months~~	
	~~4-5 months~~	
	~~6-7 months~~	
	~~9-10 months~~	
	~~12-15 months~~	
	~~16-19 months~~	
	~~23-25 months~~	
	~~3~~	~~3~~
	4	
	~~5-6~~	~~6~~
	~~7-8~~	~~7-8~~
	~~9-10~~	~~9-10~~
	~~11-12~~	~~11-12~~
	~~13-14~~	~~13-14~~
	~~15-16~~	~~15-16~~
	~~17-20~~	~~17-20~~]

Section 7. EPSDT Special Services. EPSDT special services are other health care, diagnostic services, preventive services, rehabilitative services, treatment, and other measures described in 42 USC Section 1396d(a), that are not otherwise covered under the Kentucky Medicaid Program and that are medically necessary, as defined in Section 9 of this administrative regulation, to correct or ameliorate defects and physical and mental illnesses and conditions of recipients.

Section 8. EPSDT Diagnostic and Treatment Provider and EPSDT Special Services Provider Participation Requirements. (1) An EPSDT diagnosis and treatment provider shall meet the requirements for participation in the Kentucky Medicaid Program as specified in 907 KAR for the particular diagnosis and treatment services rendered.

(2) Except as otherwise specified in 907 KAR, a provider seeking to provide EPSDT special services, as defined in Section 7 of this administrative regulation, shall first submit a provider enrollment application to the department to become an EPSDT special services provider. In order to be enrolled, the provider shall supply documentation or other evidence which establishes that all of the following conditions are met:

(a) The provider is licensed or certified under state laws to provide the services, or; if the license or certification is not available under such state laws, is otherwise authorized under state laws to provide the service, and is not suspended or otherwise disqualified.

(b) If the provider is out of state, the provider shall meet comparable requirements in the state in which he does business.

Section 9. Prior Authorization for EPSDT Diagnosis and Treatment Services and EPSDT Special Services. Except as otherwise provided for in this section or in 907 KAR, those EPSDT diagnosis and treatment services and EPSDT special services which are not otherwise covered by the Kentucky Medicaid Program shall be covered subject to prior authorization if the requirements of subsections (1) and (2) of this section are met. The department shall review requests for services to determine medical necessity without regard to whether the screen was performed by a Kentucky Medicaid provider or a non-Medicaid provider.

(1) Requests for prior authorization for EPSDT services set forth in Section 6(2) and (3) of this administrative regulation shall state that the request is for EPSDT services, and shall be accompanied by the following information:

(a) The primary diagnosis and significant associated diagnoses.

(b) Prognosis.

(c) Date of onset of the illness or condition, and etiology if known.

(d) Clinical significance or functional impairment caused by the illness or condition.

(e) Specific types of services to be rendered by each discipline with physician's prescription where applicable.

(f) Therapeutic goals to be achieved by each discipline and anticipated time for achievement of goals if applicable.

(g) The extent to which health care services have been previously provided to address the defect, illness, or condition, and results demonstrated by prior care where applicable.

(h) Any other documentation necessary to justify the medical necessity of the requested service.

(2) Except as otherwise provided for in 907 KAR, requests for approval of services shall meet the standard of medical necessity for EPSDT if the following criteria, where applicable, are met:

(a) The services shall be to correct or ameliorate defects and physical and mental illnesses and conditions.

(b) The services to be provided shall be medical or remedial in nature.

(c) The services shall be individualized and consistent with the recipient's medical needs.

(d) The services shall not be requested primarily for the convenience of the beneficiary, family, physician or another provider of services.

(e) The services shall not be unsafe or experimental.

(f) If alternative medically accepted modes of treatment exist, the services shall be the most cost-effective available.

(g) The requests for diagnostic and treatment services in community-based settings shall not be approved if the costs would exceed those of equivalent services at the appropriate institutional level of care as appropriate.

(h) The services to be provided shall be:

1. Generally recognized by the appropriate medical profession as an accepted modality of medical practice or treatment;

2. Within the authorized scope of practice of the provider; and

3. An appropriate mode of treatment for the medical condition of the recipient.

(i) Scientific evidence, if available, shall be submitted consisting of well-designed and well-conducted investigations published in peer-review journals, demonstrating that the service can produce measurable physiological outcomes, or, in the case of psychological or psychiatric services, measurable psychological outcomes, concerning the short- and long-term effects of the proposed service on health outcomes. Opinions and evaluations published by national medical organizations, consensus panels and other technology evaluation bodies supporting provision of the benefit shall also be considered when available.

(j) The predicted beneficial outcome of the services outweighs

potential harmful effects.

(k) The services improve the overall health outcomes as much as, or more than, established alternatives.

(3) If reimbursement is being sought on a "by report" basis, a description of the service, the proposed unit of service, and the requested dollar amount shall be included with the request for authorization.

(4) Prior authorization requests for EPSDT services shall be reviewed for medical necessity without regard to the source of the referral to the service.

(5) School-based health services provided in accordance with 907 KAR 1:715 which are included in an authorized Individual Education Program (IEP) shall be considered to be medically necessary and shall not be subject to further Medicaid prior authorization requirement. In accordance with the provisions of KRS 605.115, this subsection of this administrative regulation shall be applicable for services provided on and after January 1, 1995.

Section 10. Appeal Rights. Recipients have rights of appeal as specified in 907 KAR 1:560.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: May 7, 1996
FILED WITH LRC: May 13, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: Eligible Medicaid children under age twenty-one (21) and local school districts who wish to participate as school-based health services Medicaid providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A 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: See companion regulation 907 KAR 1:715E.
2. Continuing costs or savings: See companion regulation 907 KAR 1:715E.
3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:715E.

(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 health care services are available to 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: May pose an imminent threat to the public health, safety, or 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

STATEMENT OF EMERGENCY
907 KAR 1:035E

This emergency administrative regulation is being amended to comply with KRS 605.115 to permit local school districts to participate through the Department of Education as Medicaid providers and receive reimbursement for health related services identified in the child's individual education plan when provided to Medicaid eligible recipients. This action must be taken on an emergency basis to ensure that access to medically necessary health care services are available to Medicaid 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 shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

907 KAR 1:035E. Payments for early and periodic screening, diagnosis, and treatment services.

RELATES TO: KRS 205.520, 605.115
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40(b), 447 Subpart B, 42 USC 1396a, b, d, EO 95-79
EFFECTIVE: May 13, 1996
NECESSITY AND FUNCTION: The Cabinet for Health Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medical Assistance~~]. 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 Medicaid [~~medical assistance~~] to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Department for Medicaid Services for early and period screening services. [~~cabinet for screening services.~~]

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agency.

(2) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(3) "Recipient" means a Medicaid eligible individual under the age of twenty-one (21).

(4) "Usual and customary charge" means as defined in 907 KAR 1:002.

Section 2. [~~1.~~] Physicians and primary care centers shall be reimbursed for screening services in accordance with the payment provisions set forth by administrative regulations 907 KAR 3:010 [~~1:010~~] and 907 KAR 1:055 for those service providers.

Section 3. [~~2.~~] Reimbursement of Enrolled Screening Providers [~~Clinics~~]. The department [~~cabinet~~] shall reimburse participating enrolled screening providers [~~clinics or agencies~~] on the basis of a preestablished fee which shall be related to the cost of service. The amounts payable shall be in accordance with the following:

(1) For a complete screening which includes all items or procedures listed in Section 3 of 907 KAR 1:034 appropriate to age and health history of the recipient [~~child~~], the fee shall be twenty (20) dollars per recipient [~~individual~~] screened;

(2) For a partial screening, with some but not all items listed in Section 3 of 907 KAR 1:034 [~~items or procedures appropriate to age and health history of the child not~~] completed, but at no fault of the screening clinic or agency, the fee shall be twelve (12) dollars per recipient [~~individual~~] screened [~~when preauthorized by the cabinet~~]; and

(3) For completion of a partial screening with some items or procedures appropriate to age and health history of the recipient [~~child~~] provided as a follow-up to a partial screening (whether the partial screening is provided by a physician, primary care center, or screening clinic or agency), the fee shall be eight (8) dollars per recipient [~~individual~~] screened.

(4) A [~~In no instance may the~~] fee paid in accordance with subsection (1) to (3) of this section shall not exceed the usual and customary charge [~~fee~~] of the provider for the service.

Section 4. Reimbursement of EPSDT Diagnostic and Treatment Providers. The department shall reimburse EPSDT diagnosis and treatment providers participating in compliance with Section 8(1) of 907 KAR 1:034 as specified in 907 KAR for the particular diagnosis and treatment services rendered.

Section 5. Reimbursement of EPSDT Special Services Providers. Except as specified in Section 6 of this administrative regulation, the department shall reimburse EPSDT special service providers a percentage of the usual and customary charges or a negotiated fee which is adequate to obtain the service. The percentage of charges or negotiated fee shall not exceed 100 percent of the usual and customary charges. If the item is covered under Medicare, the payment amount shall not exceed the amount that would be paid using the Medicare payment methodology and upper limits.

Section 6. Reimbursement of School-based Health Services Providers. The department shall reimburse school-based health services providers for services included in an individual education program which are provided to Medicaid eligible recipients based on a fee-for-service system designed to approximate cost in the aggregate without settlement to exact cost. Payment rates for services provided on or after January 1, 1995, shall be established using the following methodology:

(1) Interim payment rates for services provided from January 1, 1995, through June 30, 1996, shall be based on a reasonable sample of providers statewide. Payments for services shall be adjusted up or down as appropriate when final rates are established.

(2) Interim payment rates for services provided after June 30, 1996, and annually thereafter shall be based on cost data in accordance with subsection (3) of this section for the previous state fiscal year and shall be adjusted up or down as appropriate when final payment rates are established.

(3) Final rates shall be set based on the following:

(a) Except as specified in paragraphs (d) and (e) of this subsection, a payment rate for a particular service shall be based on the lower of the mean or median of the participating providers' cost of providing the service. The statewide mean and median cost for a service shall be based on the contracted hourly service cost and the cost associated with publicly employed professionals. The mean and median hourly cost shall be calculated, for each class of qualified professionals, from an array of hourly cost data falling within one (1) standard deviation of the mean.

(b) Cost for publicly employed professionals shall be computed in the following manner:

1. Salary, fringe benefits, and indirect overhead shall be included.

2. Annual professional salaries (including full-time equivalent employees) shall be converted to hourly wages using 185 work days per year and six (6) work hours per day.

3. The applicable fringe benefit cost based on the actual percentage rate for classified and certified employees shall be added to the hourly salary wage.

4. An indirect overhead cost consisting of seven (7) percent of the hourly wage shall be added to the hourly salary wage.

(c) Payments for professional services shall be based on units of service which are fifteen (15) minute increments.

(d) Payments for medical transportation shall be based on the average cost per mile of pupil transportation as calculated by the Department of Education.

(e) Payments for assistive technology and medical equipment shall be based on actual invoiced cost including cost of shipping and handling, for the authorized equipment included in an individual education program.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: May 7, 1996
FILED WITH LRC: May 13, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: Eligible Medicaid children under age twenty-one (21) who have an individual education plan with the local school district and local school districts who wish to participate as school-based health services Medicaid providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A 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: See companion regulation 907 KAR 1:715E.
2. Continuing costs or savings: See companion regulation 907 KAR 1:715E.
3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:715E.

(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 access to medically necessary health care services is available to 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: May pose an imminent threat to the public health, safety, or 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

STATEMENT OF EMERGENCY
907 KAR 1:715E

This emergency administrative regulation is being amended to comply with KRS 605.115 to permit local school districts to participate through the Department of Education as Medicaid providers and receive reimbursement for health related services identified in the

child's individual education plan when provided to Medicaid eligible recipients. This action must be taken on an emergency basis to ensure that access to medically necessary health care services are available to Medicaid 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 shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

907 KAR 1:715E. School-based health services.

RELATES TO: KRS 156.070, 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.560, 605.115
EFFECTIVE: May 13, 1996
NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the program of Medicaid. 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 Medicaid services to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients.

Section 1. Definitions. (1) "Assistive technology device" means any item, piece of equipment, or product system that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is medically necessary to implement the individual education program.

(2) "IDEA" means Individuals with Disabilities Education Act.

(3) "Incidental interpreter services" means those interpreter services which are necessary in order to allow the child to benefit from other covered school-based health services.

(4) "Recipient" means a Medicaid eligible child under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(5) "School-based health services" (SBHS) means those services which are evaluative, diagnostic, preventive, rehabilitative, and treatment services provided to eligible recipients under age twenty-one (21) to provide the maximum reduction of physical or mental disability, to allow for functioning of the recipient to his best possible level, to prevent loss of current functional level, or to correct any defects or conditions. For purposes of coverage as provided for in 907 KAR 1:034, SBHS includes only those services identified as necessary within an Individual Education Program for persons determined to be eligible under the provisions of the Individuals with Disabilities Education Act (IDEA), 20 USC Chapter 33, and 707 KAR Chapter 1.

Section 2. Participation Requirements. (1) School districts that request to participate as a school-based health care provider shall be required to comply with the following and submit to an annual review by the Department of Education for compliance with the standards for Medicaid certification as a participating Medicaid provider:

(a) Agree to provide school-based health services as required by IDEA, 20 USC Chapter 33, and as authorized in an approved individual education program by a multidisciplinary team of professionals acting within their scope of practice;

(b) Submit to or have completed an on-site survey by the Department of Education within seven (7) years from the date of enrollment in the Medicaid Program; and

1. Have been found to be in compliance with the requirements for provision of services required by the IDEA; or

2. If found to be in noncompliance, is taking action considered appropriate by the Department of Education to correct deficiencies;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation for the provision of Medicaid covered services;

(d) Provide to the Department of Education a proposed quality assurance outline;

(e) Agree to develop and implement, within one (1) year from the date of the recommendation for certification to the Department for Medicaid Services by the Department of Education, a quality assurance program for the provision of Medicaid covered services which has been approved by the Department of Education;

(f) Agree to maintain and submit to the Department of Education all required records and reports to ensure compliance with IDEA; and

(g) Provide the Department of Education with a list of school-based health services that the school district requests to provide. The list shall include the names, credentials, salaries, fringe benefit percentages, and contract amounts of those employees and contractors.

(2) The Department for Medicaid Services may grant Medicaid certification to those providers who meet the criteria in subsection (1) of this section and are recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

Section 3. Services. (1) Except as otherwise limited in this section and Sections 4, 5, and 6 of this administrative regulation, the following services shall be covered if provided to address a medical or mental disability and assist the individual in benefiting from special education programming which is included, authorized, and provided in accordance with the individual education program:

(a) Nursing services;
(b) Audiology services;
(c) Speech and language services;
(d) Occupational therapy services;
(e) Physical therapy services;
(f) Mental health services;
(g) Incidental interpreter services provided in conjunction with another covered service;
(h) Assistive technology devices and appropriate related evaluations;
(i) Transportation; and
(j) Orientation and mobility service.

(2) If appropriate, services listed in subsection (1) of this section:

(a) Shall not be limited by site of service;
(b) May be provided in a group or one-on-one situation; and
(c) May include assessment, evaluation, treatment, and collateral components.

(3) Assessments and evaluations conducted prior to the establishment of the individual education program shall be covered if an individual education program is subsequently authorized and implemented.

Section 4. Staffing Requirements. School-based health services shall be reimbursable only if provided by professionals acting within their scope of practice as defined by state law as follows:

(1) Nursing services may be provided by:

(a) Advanced registered nurse practitioner (ARNP) with current license from the Kentucky Board of Nursing;

(b) Registered nurses with current license from the Kentucky Board of Nursing;

(c) Licensed practical nurses with appropriate supervision and

delegation; and

(d) Health aide if he:

1. Is under the supervision of a specific registered nurse or ARNP;

2. Is trained by the supervising nurse for the specific nursing service for the specific recipient; and

3. Is approved in writing by the supervising nurse to possess adequate training and skills to perform the specific service in a safe, effective manner.

(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech Language Pathology and Audiology.

(3) Speech and language services shall be provided by:

(a) A speech pathologist with:

1. A current license from the Kentucky Board of Speech Language Pathology and Audiology; or

2. A masters degree in the area of speech-language pathology or a substantive equivalent and currently certified by the Kentucky Education Professional Standards Board (KEPSB); and

(b) A speech-language pathology assistant with a current license from the Kentucky Board of Speech-Language Pathology and Audiology and under the supervision of a licensed or certified masters-level speech-language pathologist in accordance with KRS 334A.080.

(4) Occupational therapy services may be provided by:

(a) An occupational therapist with a current license from the Kentucky Occupational Therapy Board;

(b) An occupational therapy assistant licensed to assist under the supervision of an occupational therapist; and

(c) Occupational therapy aide (not licensed) who assists in the practice of occupational therapy under the direct supervision of the licensed occupational therapist or occupational therapist assistant and has an understanding of occupational therapy in accordance with KRS 319A.010(5).

(5) Physical therapy services may be provided by:

(a) A physical therapist with a current license from the Kentucky Board of Physical Therapy;

(b) A physical therapist assistant with a current license, physical therapist with a temporary permit, and a student of physical therapy who are under the supervision of a licensed physical therapist; and

(c) A physical therapy aide under the direct on-site supervision of the licensed physical therapist or licensed physical therapist assistant in accordance with the provisions of 201 KAR 22:053, Section 5.

(6) Mental health services may be provided by:

(a) A licensed clinical psychologist;

(b) A licensed counseling psychologist;

(c) A licensed school psychologist;

(d) A school psychologist with a doctoral or master's degree and certified by the KEPSB;

(e) A certified psychologist with autonomous functioning;

(f) A certified psychologist or psychological associate with a master's degree under the supervision of the licensed psychologist in accordance with KRS Chapter 319;

(g) A social worker with a master's in social work and certified by KEPSB or a bachelor's degree in social work and two (2) years experience in individual counseling with adolescents in social service delivery;

(h) A licensed clinical social worker;

(i) A guidance counselor certified by the KEPSB; and

(j) A psychometrist certified by the KEPSB.

(7) Incidental interpreter services shall be provided in accordance with the following:

(a) Minimum qualifications during 1995 and 1996 shall be as follows:

1. Sign language interpreters shall be certified by the Registry of Interpreters for the Deaf (RID) or other national certifying body or shall hold the beginning level of the Kentucky Interpreting Skills Screening (KISS).

2. Cued speech interpreters shall demonstrate ability to perform at Level 1 of the National Cued Speech Association's certification examination.

3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.

(b) Minimum qualifications after 1996 shall be as follows:

1. Sign language interpreters shall be certified by the Registry of Interpreters for the Deaf (RID) or other national certifying body or shall hold the Intermediate Level of the Kentucky Interpreting Skills Screening (KISS).

2. Cued speech interpreters shall demonstrate ability to perform at Level 2 of the National Cued Speech Association's certification examination.

3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.

(8) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the Association of Education and Rehabilitation for the Blind and Visually Impaired (AER).

Section 5. Limitations On Transportation Services. (1) Transportation services include transporting the recipient to a site which is other than the school building in which he is enrolled for general education purposes or to the service site if the child is a home-bound student and receives general education services at home.

(2) Transportation to and from home to the school shall not be a covered service under school-based health services.

(3) Transportation services shall be covered if provided using the type of vehicle which meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130, and is appropriate for the disability.

(4) Transportation shall not be covered if provided by a member of the recipient's household if that person is not an employee of the school district.

Section 6. Special Requirements for Assistive Technology Devices. The item or device shall become the property of the recipient if purchased by the Medicaid Program.

Section 7. Implementation Date. In accordance with the provisions of KRS 605.115, this administrative regulation shall be applicable for services provided on and after January 1, 1995.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: May 7, 1996
FILED WITH LRC: May 13, 1996 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: Eligible Medicaid children under age twenty-one (21) who have an individual education plan with the local school district and local school districts who wish to participate as school-based health services Medicaid providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A 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) $62,293,445 from August 1, 1995 to June 1, 1996; $70,466,043 for FY 1997*.

2. Continuing costs or savings: (cost) $80,916,953*.

3. Additional factors increasing or decreasing costs: The number of services provided to eligible Medicaid recipients will increase or decrease the costs.

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A 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 access to medically necessary health care services is available to 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: May pose an imminent threat to the public health, safety, or 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: *It should be noted that the state's share of the expenditures will be provided through certified expenditures at the local school districts using current appropriated funds.

(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 REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), (5), 314.051(2), (3) [(1)]
STATUTORY AUTHORITY: KRS 314.041(1), 314.051(2), (3), 314.131(1)
NECESSITY AND FUNCTION: KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.041(5) requires an applicant for licensure as a registered nurse to pay applicable examination fees. KRS 314.051(2) requires an applicant for licensure as a licensed practical nurse to pay applicable examination fees. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes criteria and fees for the licensure of nurses by examination. [To assure that applicants for licensure by examination meet minimum standards set forth by the board as necessary for safe practice. To provide some security in the examination process.]

Section 1. Eligibility for Licensure by Examination. (1) To be eligible for licensure by examination for graduates of Kentucky programs and other state or territorial nursing programs, applicants shall:

[(1) Hold a high school diploma or equivalent.

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

(a) [(3)] For graduates of Kentucky programs of nursing, have the nursing program submit verification on "Certified List of Program of Nursing Graduates" that the applicant has:

1. Completed the program of nursing; and

2. [has] Successfully completed all requirements for a degree, diploma or certificate [therefrom, on a form prescribed by the board].

(b) For graduates of the programs of nursing outside Kentucky, submit an official transcript of nursing program.

(c) [(4)] Submit:

1. A properly executed application for licensure;

2. [current] Application for licensure fee; and

3. One (1) passport type photograph (two (2) x three (3) inches) taken within the past six (6) months, with the photograph[s] signed and dated by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program, [(]if graduated therefrom, [)] on the back of the photograph[s]. A snapshot shall not be submitted. [Snapshots are not acceptable.]

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

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

(f) [(7)] Submit a copy of a marriage certificate or court order to change name, if name is changed after the original application is filed.

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

(h) [(9)] Apply to take and pass the national council licensure examination or its equivalent as specified in Section 3 of this administrative regulation.

(i) [(10)] Pay [all necessary] fees for application for licensure established by this administrative regulation and 201 KAR 20:240. [as stated in this section and, if applicable, Sections 2 and 4 of this administrative regulation.]

(j) [(11)] Meet the requirement of 902 KAR 2:150, Human immunodeficiency virus education, initial professional licensure.

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

Section 2. Graduates of Foreign Nursing Schools. To be eligible for application for licensure by examination, a graduate of a foreign nursing school shall comply with the provisions of this section.

(1) A registered nurse applicant shall submit a certificate of successful completion of the Commission on Graduates of Foreign Nursing Schools examinations, unless the applicant:

(a) Is licensed as a registered nurse in a jurisdiction or territory governed by the United States;

(b) Has received a graduate degree in nursing from a university or college in the United States; or

(c) Is a graduate of a program of nursing in Canada.

(2) If licensed in another country, or in a jurisdiction or territory governed by the United States, the applicant shall submit a statement from the licensing authority that the:

(a) Applicant is a licensee in good standing;

(b) License has not been revoked, suspended, or probated; and

(c) Licensee has not been suspended or otherwise disciplined in the licensing country.

(3) An applicant shall submit proof of legal permanent or temporary residency under the laws and regulations of the United States. [(1) To be eligible for application for licensure by examination, graduates of foreign nursing schools shall submit evidence of the following:

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

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

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

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

(b) If licensed in another United States jurisdiction or country, verification of licensure as a nurse with a statement from the licensing authority that the license is in good standing and has not been revoked, suspended, probated, or otherwise disciplined in that country and that no such action is currently pending.

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

(4) An applicant [(2) Applicants for licensure by examination] shall meet the requirements of [as stated in] Section 1 of this administrative regulation.

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

Section 3. Licensing Examination Standards. (1) An [The] applicant shall pass the national council licensure examination or an examination that meets the criteria established by subsection (2)

of this section. [acceptable to the board.]

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

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

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

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

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

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

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

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

Section 4. Retaking the Examination. (1) An examination candidate[s] who fails to achieve a passing result may retake the examination after meeting:

(a) The requirements of [as stated in] Section 1 of this administrative regulation and, if applicable, Section 2 of this administrative regulation; and

(2) [after] Submission of:

1. [(a)] The retake application; and

2. [(b)] The applicable fee.

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

Section 5. Release of Examination Scores. The board shall release examination numerical results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.; and

(4) An individual or agency who submits an applicant's or licensee's written authorization for their release.

Section 6. Incorporation By Reference. (1) "Certified List of Program of Nursing Graduates", (2/96), is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8:30 a.m. to 4:30 p.m. [The board shall not release examination numerical results to any individual or agency without written authorization from the applicant or licensee except as follows:

(1) The candidate;

(2) Other state boards of nursing;

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

MELDA S. LOGAN, President

APPROVED BY AGENCY: March 13, 1996

FILED WITH LRC: March 15, 1996 at 10 a.m.

KENTUCKY SPINAL CORD AND HEAD INJURY RESEARCH BOARD (As Amended)

202 KAR 4:010. Spinal Cord and Head Injury Research Program.

RELATES TO: KRS 189.125, 189.394(5), 211.504

STATUTORY AUTHORITY: KRS 211.500, 211.502, 211.504

NECESSITY AND FUNCTION: KRS 211.502 provides that the Kentucky Spinal Cord and Head Injury Research Board promulgate administrative regulations necessary to review and authorize spinal cord and head injury research projects and programs, pursuant to the provisions of KRS 211.500 to 211.504. This administrative regulation establishes the protocol by which the Kentucky Spinal Cord and Head Injury Board will review research grant proposals from the University of Kentucky and the University of Louisville. It further establishes the guidelines by which grant proposals from the universities are rated and the mechanism by which funds are allocated for the appropriate grants proposals.

Section 1. Definitions. (1) "APA" means the American Paralysis Association.

(2) "Applicant" means the entity within the University of Kentucky or University of Louisville applying for the grant award.

(3) "Board" means the Kentucky Spinal Cord and Head Injury Research Board.

(4) "Host institution" means the University of Kentucky or the University of Louisville.

(5) "NIH" means the National Institutes of Health.

(6) "PI" means the principle investigator.

(7) "SAC" means the Science Advisory Council of the American Paralysis Association.

(8) "Trust" means the Kentucky Spinal Cord and Head Injury Trust.

Section 2. Proposal Submission Process. (1) A research project proposal shall be submitted to the board on "Proposal Application and Instructions" form.

(2) The submission deadline for research proposal applications shall be September 30 of each year.

(3) The board shall transmit a project proposal to the director of research with a request that he transmit the:

(a) Project proposal to the members of the SAC of the APA for their review; and

(b) Rating recommendations for each project made by the members of the SAC to the board.

(4) After review of the rating recommendations submitted to the board, the board shall determine whether a [which] project proposal shall be funded.

(5) An applicant shall be notified of the board's decision by [in] December 31 of each year.

Section 3. Project Proposal Review Criteria. (1) A project proposal shall be reviewed by the board for scientific merit and adherence to the research priorities established by subsections (2) and (3) of this section.

(2) A project proposal shall be reviewed for scientific merit as follows:

(a) Adequacy of prior research and theory in providing a basis for the research;

(b) Adequacy of methods;

(c) Adequacy of environment, facilities, equipment, available expertise, research atmosphere;

(d) Qualifications and productivity of the PI and his key staff;

(e) Time commitments of the PI and his key staff;

(f) Availability of subjects or patients where relevant;

(g) Adequacy of procedures for assessing the effect of interventions on recovery; and

(h) Other factors that affect the potential of the applicant to address successfully the research aims.

(3) A project proposal shall be reviewed by the board for adherence to research priorities as follows:

(a) In vivo and in vitro studies on naturally occurring phenomena that may:

1. Promote neuronal growth;
2. Encourage the formation of synapses;
3. Enhance the production of myelin;
4. Restore conduction capabilities; or
5. Otherwise lead toward restoring compromised circuitry in the injured spinal cord or brain.

(b) Evaluation of the efficacy of pharmacological agents or other interventions that:

1. Protect against secondary neuronal injury;
2. Improve function in chronic spinal cord or brain injury; or
3. Provide insight into the mechanisms causing such damage.

(c) Biological characterization of spinal cord or head injury in well-defined animal models, and in the human spinal cord or brain, specifically documenting the neuronal systems that are most vulnerable to the functional losses that occur as a result.

(d) Development of new and more sensitive approaches for evaluating recovery after injury.

Section 4. Research Grantee Responsibilities. (1) A research contract shall be granted for a three (3) year period subject to the conditions established by this section. Renewal in years two (2) and three (3) shall depend upon fulfillment of contract terms.

(2) A grantee shall submit to the board an annual progress report, including a narrative and financial report of his progress.

(3) The annual progress report shall be due sixty (60) days prior to the anniversary of the contract start date.

(4)(a) A grantee shall submit a final:

1. Narrative progress report thirty (30) days after completion or termination of the contract; and
2. Financial report no later than ninety (90) days after completion or termination of the contract.

(b) The financial report shall be completed by the office of grants and contracts of the contracting institution.

(5) The PI shall transmit to the board copies of publications that emerge as a result of the funded research, during and after the period of the contract.

(6) A grantee shall acknowledge the source of funding from the trust in all publications and presentations.

Section 5. Incorporation by Reference. (1) "Proposal Application and Instructions KSB 8/95" is incorporated by reference.

(2) This form may be inspected, copied, or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday.

JAMES SHAUGHNESSY, Chairman
APPROVED BY AGENCY: February 12, 1996
FILED WITH LRC: February 13, 1996 at 11 a.m.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)

301 KAR 2:178. Deer hunting on wildlife management areas.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990
STATUTORY AUTHORITY: 150.025, 150.170, 150.175

NECESSITY AND FUNCTION: To establish deer hunting administrative regulations on wildlife management areas and other public lands open to deer hunting. The purpose of this amendment is to adjust dates and other hunting requirements on wildlife management areas. [~~The substance of this administrative regulation was formerly contained in 301 KAR 2:171, which is being repealed. Substantive changes from 301 KAR 2:171(9) are: decreasing from three (3) to two (2) the number of youth hunts on Ballard WMA; opening Peabody WMA during the early muzzle-loader season; changing the Green River Lake WMA quota hunt from any deer to antlered deer; closing Lloyd, Kentucky River and Lapland WMAs to weekend gun deer hunting; establishing an antlered deer quota hunt and an archery season at Fishtrap Lake WMA; increasing the area limit from one (1) to two (2) deer at Higginson-Henry WMA; moving the quota hunt at Paintsville Lake WMA from November to December; changing the archery season opening date from October 15 to October 1 on Cane Creek and Beaver Creek WMAs; and adjusting dates for deer hunts on the West Kentucky WMA.~~]

Section 1. Definitions. (1) "Modern gun season" means the ten (10) consecutive-day period beginning the second Saturday in November.

(2) "Private inholding" means privately owned property completely surrounded by a WMA.

(3) "Quota hunt" means WMA deer hunts, including youth hunts, whose participants are selected by a random drawing.

(4) "Statewide deer requirements" means the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 2:174.

(5) "Wildlife management area" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(6) "WMA" means a wildlife management area.

(7) "WMA tag" means a carcass tag the department issues to hunters for use on WMA deer hunts.

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements apply to WMAs.

(2) If specific deer hunting dates are given for a WMA in this administrative regulation, persons shall hunt deer only on those dates.

(3) On WMAs, Westvaco Public Hunting Areas, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge, Land Between the Lakes and the Big South Fork National Rivers and Recreation Area, persons:

(a) Shall not use nails, spikes, screw-in devices, wire or tree climbers for attaching tree stands or climbing trees.

(b) May use portable stands and climbing devices that do not injure trees.

(c) Shall not place portable stands in trees more than two (2) weeks before opening day, and shall remove them within one (1) week following the last day, of each hunting period.

(d) Shall plainly mark portable stands with their name and address.

(e) Shall not use existing permanent tree stands.

(4) Limits.

(a) A hunter may take two (2) deer from the West Kentucky and Higginson-Henry WMAs.

(b) A hunter shall not take more than one (1) deer from each of the other WMAs listed in Section 5 of this administrative regulation.

(5) Owners of private inholdings or their guests may hunt on the owner's lands without application but shall follow all other requirements for the WMA which surrounds the inholding.

(6) Persons shall not hunt on private inholdings when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on established public roads or to use areas designated open by signs, persons without a valid

quota hunt permit shall not enter a WMA during quota hunts on that area.

(8) Persons hunting any species or persons accompanying them shall wear hunter orange:

(a) Meeting the requirements specified in 301 KAR 2:271.

(b) On WMAs when firearms are permitted for deer hunting.

(9) Persons shall not:

(a) Enter portions of WMAs marked by signs as closed to public access; or

(b) Hunt in portions of WMAs marked by signs as closed to hunting.

Section 3. Quota Hunt Applications. (1) Persons whose names are not drawn shall not hunt during quota hunts.

(2) Persons wishing to participate in quota hunts shall apply on forms furnished by the department.

(3) More than one (1) hunter shall not apply per form.

(4) Four (4) or fewer persons may apply as a party by stapling their applications together and mailing them in the same envelope.

(5) Hunters over sixteen (16) years old shall not apply to more than one (1) quota hunt.

(6) Persons at least ten (10) but not yet sixteen (16) years old by the scheduled hunt date may apply for:

(a) One (1) quota hunt;

(b) One (1) Ballard WMA youth hunt; and

(c) One (1) other youth hunt.

(7) Applicants who submit multiple applications or fail to meet application requirements shall be disqualified.

(8) Applicants shall stamp and self-address applications.

(9) Applications shall be postmarked no later than August 31.

(10) The commissioner may extend the application deadline if the production or distribution of forms is delayed.

Section 4. Quota Hunt Procedures. (1) Persons shall hunt on assigned dates and in assigned areas.

(2) Hunters may use firearms, archery equipment or crossbows during quota hunts.

(3) Hunters shall check in before, and check out at the completion of, the quota hunt.

(4) When checking in, persons required to possess hunting licenses and deer permits shall show:

(a) A hunting license;

(b) A valid quota hunt permit;

(c) Proof of identify, including Social Security number; and

(d) A current deer permit; or

(e) A completed hunter's portion of a current deer season game check card.

(5) A person whose name does not appear on a quota hunt permit shall not use that permit.

(6) The youth hunt permit shall admit the person whose name appears on the permit and one (1) adult. The adult shall not be required to:

(a) Possess a hunting license or deer permit; or

(b) Apply in advance.

(7) Quota hunt participants shall tag deer with WMA tags issued when they check in.

(8) Deer taken during quota hunts do not count toward season limits specified in statewide deer requirements.

(9) Persons drawn for quota hunts on Ballard, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not apply to the same area quota hunt for the next three (3) seasons.

Section 5. WMA Hunting Dates and Requirements. (1) Ballard WMA.

(a) Quota youth hunts, antlered or antlerless deer as specified on permit: two (2) consecutive Saturdays and Sundays beginning the third Saturday in October.

(b) Statewide deer requirements apply to the 300 acre tract south of Terrell Landing Road.

(2) Beaver Creek WMA.

(a) Archery hunt, antlered deer: [~~1.~~] October 1 through [~~the day before the modern gun season.~~

~~2. The day after the quota hunt through~~] December 31, except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November [~~December~~].

(3) Cane Creek WMA.

(a) Archery hunt, antlered deer: October 1 through December 31.

(b) Gun hunt, antlered deer: the second Saturday in November.

(4) Central Kentucky WMA.

(a) Archery hunt, any deer: December 18 through January 15.

(b) Deer hunters shall check in and check out.

(5) Clay WMA.

(a) Archery hunt, antlered deer: October 15 through the day before the modern gun season.

(b) Deer hunters shall check in and check out.

(6) Cyprus AMAX-Robinson Forest WMA.

(a) Persons shall not hunt deer:

1. On the main block of Robinson Forest.

2. With firearms during the modern gun season.

(b) Archery and muzzle-loader seasons correspond to statewide requirements, except no archery hunting during the youth quota hunt.

(c) Youth quota hunt, antlered deer only: two (2) consecutive days beginning the fourth Saturday in October.

1. Hunters and the adults who will accompany them during the hunt shall participate in a training and safety seminar.

2. The department shall notify successful applicants of the time and place of the training and safety seminar.

(d) [~~(c)~~] Deer hunters shall check in and out.

(7) Daviess County WMA: closed to deer hunting.

(8) Dewey Lake WMA.

(a) Archery hunts: any [~~1. Antlered~~] deer, October 1 through [~~October 14.~~

~~2. Any deer, October 15 through October 31.~~

~~3. Antlered deer, November 1 through~~] December 31, except persons shall not archery hunt during:

1. [~~a.~~] The youth quota hunt; or

2. [~~b.~~] The modern gun deer season.

(b) Youth quota hunt, [~~antlered or~~] antlerless deer [~~as specified on permit~~]: two (2) consecutive days beginning the first Saturday in November.

(c) Deer hunters shall check in and check out.

(9) Fishtrap Lake WMA.

(a) Archery hunt, antlered deer, October 1 through December 31, except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the fourth [~~second~~] Saturday in November [~~December~~].

(10) Grayson Lake WMA.

(a) Youth quota hunts, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(b) Archery and crossbow hunt, any deer: October 1 through December 31.

(c) The portion of the area west of Route 1496 and east of Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork is open to youth quota hunting and closed to archery and crossbow hunting.

(d) Deer hunters shall check in and shall check out. **Quota hunters shall check out** before 6 p.m.

(11) Green River Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: October 1 through December 31, except during the quota hunt.

(12) Higginson-Henry WMA.

(a) Quota hunt, antlered or antlerless deer as specified on permit: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunts.

1. Antlerless deer, October 1 through 15.

2. Any deer, October 16 through December 31.

(c) Deer hunters shall check in and check out.

(13) Kleber WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in October through December 31, except during the quota hunt.

(c) Deer hunters shall check in and check out.

(14) Kentucky River WMA. Statewide deer requirements apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.

(15) Lapland WMA (including the Indiana Hardwoods Tract). Statewide seasons apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.

(16) Lloyd and Mullins WMAs. Statewide seasons apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.

(17) Mill Creek WMA.

(a) Archery hunt, antlered deer: October 15 through the day before the modern gun season, and the day after the quota hunt through December 31.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(18) Obion Creek WMA.

(a) Quota hunt, any deer: three (3) consecutive days beginning the first Friday in November.

(b) Archery hunt, any deer: October 1 through December 31, except during the quota hunt.

(19) Paintsville Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunt, any deer: October 1 through December 31, except no archery hunting during the quota hunt or the modern gun deer season.

(c) Deer hunters shall check in and check out.

(20) Peabody WMA.

(a) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning **the day after the last day of the first quota hunt.** [~~the third Thursday in November.~~]

(b) Muzzleloader hunt, any deer: two (2) consecutive days beginning the third Saturday in October.

(c) Archery hunt, any deer: October 1 through January 15, except during quota hunts.

(21) Pennyrile WMA.

(a) Quota hunt, any [~~antlered~~] deer: two (2) consecutive days beginning the first Saturday in November [~~December~~].

(b) Archery hunt, any [~~antlered~~] deer: October 1 through January 15, except during quota hunts.

(c) **Quota** hunters shall check out by 6 p.m. daily.

(22) Pioneer Weapons WMA. Statewide requirements apply except:

(a) Hunters shall not use modern guns.

(b) Crossbows may be used during the entire archery season.

(23) Redbird WMA.

(a) Archery hunt, antlered deer.

1. October 1 through the day before the modern gun season.

2. The third Thursday in November through December 31.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(c) **Gun** deer hunters shall check deer at the Redbird Ranger District Office [~~check in and check out~~].

(24) Stewart Island WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning on the last Saturday in October.

(b) Quota hunt applicants shall be present at 10 a.m. central daylight time on the third Saturday of September in downtown Smithland to participate in a public drawing.

(25) Swan Lake WMA: closed to deer hunting.

(26) Taylorsville Lake WMA.

(a) Archery hunt, any deer: October 1 through December 31, except during the quota hunts.

(b) Quota hunt, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(c) Hunters shall check in and check out daily.

(27) Tradewater WMA.

(a) Quota hunt, any [~~antlered~~] deer: two (2) consecutive days beginning the first Saturday in November [~~December~~].

(b) Archery hunt, any [~~antlered~~] deer: October 1 through January 15, except during the quota hunt.

(c) **Quota** hunters shall check out by 6 p.m. daily.

(28) Twin Knobs Campground. [~~(a)~~] Quota [~~gun~~] hunt, any deer: two (2) consecutive days beginning the second Saturday in December for persons with a disability which impairs their mobility. [~~license issued under the provisions of KRS 150.170 (7) or (8).~~

~~(b) Persons drawn for the quota hunt shall show their disability license when the they check in.~~]

(29) West Kentucky National Guard Training Unit.

(a) Shotgun quota hunt any deer: two (2) consecutive days beginning the first Saturday in December.

(b) Bow and muzzle-loader quota hunt, any deer: five (5) consecutive days beginning the third Monday of December.

(30) West Kentucky WMA.

(a) Archery hunts, any deer, except that persons shall not archery hunt for eight (8) consecutive days beginning the Saturday following Thanksgiving, or the day before and during quota hunts:

1. October 1 through December 12 on tracts one (1) through seven (7).

[~~1. October 1 through January 15 in unposted zones.~~]

2. December 16 [~~12~~] through January 15 on tract**s one (1) through** seven (7) and in designated posted zones.

[~~3. Persons shall not archery hunt.~~

~~a. For eight (8) consecutive days beginning the Saturday following Thanksgiving.~~

~~b. The day before and during quota hunts.~~]

(b) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November.

2. Two (2) consecutive days beginning the second Saturday in December.

(c) Youth hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(d) Crossbow hunt, any deer: the day following the quota youth hunt for **twelve (12)** [~~fourteen (14)~~] consecutive days.

(e) Gun hunters shall not use rifles or handguns.

(f) Persons shall not carry firearms in posted zones.

(g) A person shall not take more than two (2) deer from this WMA.

1. One (1) deer shall be antlerless and shall be tagged with the statewide tag.

2. The other deer may be antlered or antlerless and shall be tagged with a WMA tag issued on the area.

3. One (1) deer may be taken by gun; it shall be tagged with the

WMA tag.

4. The department shall not issue more than one (1) WMA tag to an individual.

(h) Deer hunters shall check in and check out.

(31) [~~(30)~~] Westvaco public hunting areas. Statewide deer requirements apply; in addition, persons hunting on Westvaco property:

(a) Shall possess a Westvaco Hunting Permit.

(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line.

(32) [~~(31)~~] White City WMA.

(a) Archery hunt, any deer: October 1 through December 31.

(b) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days immediately following the first quota hunt.

(33) [~~(32)~~] Yatesville WMA. Statewide deer requirements apply except that[~~:~~

~~(a)~~] deer hunters shall check in and check out.

[~~(b) Persons shall not take antlerless deer during the last two (2) days of the modern gun deer season.~~]

(34) [~~(33)~~] Yellowbank WMA.

(a) Quota youth hunt, antlered or antlerless deer as specified on permit: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts.

1. Antlered deer: October 1 through 14.

2. Any deer: October 15 through December 31.

(c) Deer hunters shall check in and check out.

(35) [~~(34)~~] Zilpo Campground. [~~(a)~~] Quota hunt, any deer: two (2) consecutive days beginning the second Saturday in December for persons with a disability which impairs their mobility. [~~license issued under the provisions of KRS 150.170(7) or (8).~~

~~(b) Persons drawn for the quota hunt shall show their disability license when checking in.~~]

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 1, 1996
FILED WITH LRC: March 14, 1996 at 2 p.m.

DEPARTMENT OF CORRECTIONS
(As Amended)

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 (Deleted 5-6-96)~~] [~~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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(As Amended)

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 **and at 61 Fed. Reg. 14677, April 3, 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 **and at 61 Fed. Reg. 14677, April 3, 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 **and at 61 Fed Reg. 14677, April 3, 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, **at 61 Fed. Reg. 13338, March 26, 1996 and at 61 Fed. Reg. 14677, April 3, 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 **and at 61 Fed. Reg. 14677, April 3, 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 **as amended at 61 Fed. Reg. 14677, April 3, 1996**[~~, 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;

(e) 61 Fed. Reg. 14677, April 3, 1996, L-S Document 553916;

(f) 61 Fed. Reg. 14677, April 3, 1996, L-S Document 553915; and

(g) 61 Fed. Reg. 13338, March 26, 1996.

(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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Division of Hearings
(As Amended)

601 KAR 1:029. Definitions relating to 601 KAR 1:030 through 601 KAR 1:145.

RELATES TO: KRS Chapter 281, **281.600 through 218.763, 281.790 through 281.860**
STATUTORY AUTHORITY: KRS 281.600
NECESSITY AND FUNCTION: To assure uniformity of all terminology in the administrative regulations relating to motor carriers.

Section 1. (1) [~~KRS 281.010-281.014 Adopted.~~] The definitions set forth in KRS 281.010-281.014 shall have the same meaning and effect in the administrative regulations of the Transportation Cabinet which relate to motor carriers: 601 KAR 1:030 through 601 KAR 1:145.

(2) [~~Approval.~~] "Approval" [~~shall~~] means written approval.

(3) [~~Authorized carrier.~~] "Authorized carrier" [~~shall~~] means a person duly qualified with the cabinet to engage in the transportation of persons or property for hire in either interstate commerce, or intrastate commerce in Kentucky, or both.

(4) [~~Delivery.~~] "Delivery" [~~shall~~] means handing the legal document or paper to the attorney or to the party; or leaving it at his office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or if the office is closed, or the person to be served has no office, leaving it at his dwelling house or his place of abode with some person of suitable age and discretion then residing therein.

(5) [~~Filing.~~] "Filing" [~~shall~~] means the receipt of a signed or attested document in the Transportation Cabinet, Division of Hearings, [~~Office of General Counsel,~~] at 501 High Street, Frankfort, Kentucky, during regular office hours.

(6) [~~Manifest.~~] "Manifest" [~~shall~~] means a complete listing of all shipments on a truck. The manifest shall refer to the freight bill of each shipment by individual pro number, and show the weight of each shipment and the origin and destination of each shipment.

(7) [~~Party.~~] "Party" [~~shall~~] means either an applicant, complainant, respondent, or a person who has filed a protest in accordance with 601 KAR 1:030.

(8) [~~Property.~~] "Property" [~~shall~~] means general commodities, both hazardous and nonhazardous, excluding household goods and passengers.

(9) [~~Qualified equipment.~~] "Qualified equipment" [~~shall~~] means a motor vehicle duly and currently registered and licensed for the transportation of persons or property for hire in intrastate commerce in Kentucky by an authorized carrier who may properly conduct such transportation.

(10) [~~(9)~~] **"Restrictive amendment" means an amendment to an application which limits the scope of the original application.**

(11) [~~Service.~~] "Service" when regarding a legal document or paper [~~shall~~] means the delivery of a copy to the other party or his attorney, or by mailing it to him at his address of record.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: January 11, 1996
FILED WITH LRC: February 15, 1996 at 9 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Hearings
(As Amended)

601 KAR 1:030. Hearings.

RELATES TO: KRS Chapter 281, **281.625, 281.630, 218.635, 281.637, 281.640, 281.665, 281.670, 281.684, 281.690, 281.695**
STATUTORY AUTHORITY: KRS 281.600, 49 USC 11501
NECESSITY AND FUNCTION: KRS Chapter 281 provides in part that hearings be held on applications for authority to operate motor carriers in the Commonwealth. Federal law 49 USC 11501 restricts states' authority to only those intrastate transporters of passengers or household goods. This administrative regulation establishes guidelines for conducting the required hearings **pursuant to KRS Chapters 13B and 281**.

Section 1. (1) Application to be heard together. Applications shall be set for a hearing at the earliest statutorily-permissible date convenient to the department. If more than one (1) application has been filed seeking a certificate or permit to provide transportation services over the same route or any part thereof, or if one (1) or more than one (1) application seeking the same or similar authority, has been filed prior to the issuance of notices of a hearing on any of the applications, then, a consolidated hearing shall be called on all these applications. Any similar application filed after hearing notices have been issued but prior to the date of the hearing may, in the commissioner's discretion, be considered at a consolidated hearing or may be heard independently at a time set by the department.

(2) Road conditions. Upon the filing of an application for a certificate or permit authorizing operations over any highway which has not at the time of the application been opened for use by the general traveling public the department may, within its discretion, refuse to call a hearing upon the application until the highway in question is open for traffic or shall be opened for traffic within sixty (60) days. If a hearing is called on an application, and it is determined at the hearing that the highway is not open for traffic and will not be opened for traffic within sixty (60) days of the date of the hearing, the department may proceed with the hearing or may dismiss the hearing with the provision that a hearing de novo will be called when it is determined that the road is open for traffic or will be opened for traffic within sixty (60) days.

Section 2. Notice by Department Regarding Application to Transport Household Goods or Passengers. (1)**(a) After the department has received an application for operating authority pursuant to the provisions of KRS Chapter 281 and 601 KAR 1:040,** the department shall give a minimum of thirty (30) days' written notice of **the first-notice** [~~all~~] hearing to all known, required and interested parties.

(b) The notice shall **contain the following:**

1. [~~state~~] The time and place the hearing will be held;

2. A complete description of the authority sought and [~~fully describing~~] the matter to be heard;

3. [~~shall contain~~] The name and address of the applicant; [~~party initiating or involved in the matter to be heard, and~~]

4. The docket number assigned to the matter by the department;

5. A statement [~~. The notice shall state~~] that anyone having an interest in the matter may file a protest or other proper pleading in accordance with the requirements of the administrative regulations of the department; and

6. If applicable, the name and address of the attorney representing the applicant.

(2) At a minimum when an application for a particular type of authority is received by the department, the department shall send a notice of hearing to all holders of certificates or permits granting the same or similar authority and other applicants for the same or similar authority. If the authority sought is that listed below in the first column, then the department shall send notice to the authority holders or applicants for authority listed in the second column:

(a) Airport shuttle service - all airport shuttle services, [~~charter buses,~~] limousines, and taxicabs operating in the city [~~county~~] for which authority is sought;

(b) Bus whether common carrier, suburban, city, industrial, charter, or nonprofit - all taxicabs and limousines with a situs in the proposed bus service area and all buses in the state;

(c) Common carrier limousine - all airport shuttle services, charter buses, limousines and taxicabs in the city [~~county~~] for which the certificate is sought and all limousines with operating authority in cities of counties which are contiguous to that in which the authority is sought;

(d) Common carrier taxicab - all airport shuttle services, [~~charter buses,~~] limousines and taxicabs with operating authority in the city [~~county~~] for which the certificate is sought;

(e) [~~Regular and irregular route common carriers - all common carrier trucks, contract truck carriers, local cartage carriers, and parcel delivery carriers;~~

~~(f) Contract truck carrier - all local cartage carriers, common carriers, contract truck carriers and parcel delivery carriers;~~

~~(g)~~] Household goods carrier - all household goods[~~, local cartage and common~~] carriers[~~;~~

~~(h) Local cartage carrier - all local cartage carriers, household goods carriers, parcel delivery carriers and common carriers;~~

~~(i) Mobile home mover - all mobile home movers; and~~

~~(j) Parcel delivery carrier - all parcel delivery carriers, local cartage carriers and common carriers~~].

(3) The department shall schedule an administrative hearing to be held pursuant to the provisions of KRS Chapter 13B under one (1) of the following circumstances:

(a) The department receives a protest or other pleading in response to the first-notice hearing announcement;

(b) The department determines that a hearing is necessary even though a protest or other pleading was not received in response to the first-notice hearing announcement;

(c) The department receives a request to hold a hearing on a complaint received;

(d) The department receives a request to hold a hearing pursuant to the provisions of KRS Chapter 281; or

(e) As indicated by the provision of 601 KAR 1:095.

(4) In addition to the information required by KRS 13B.050(3), the notice of the administrative hearing shall contain a docket number assigned by the department.

Section 3. Notice by Applicant. (1) A passenger or household goods carrier, other than a city bus operator, which [~~who~~] proposes a change in route or an abandonment of any route shall:

(a) Give detailed notice of its proposed action to all competing and connecting carriers;

(b) Publish once a week for three (3) consecutive weeks [~~, and shall cause~~] an advertisement [~~to be published~~] in a sufficient number of newspapers of general circulation to cover the territory affected by the change sought[~~, this advertisement to be published once a week for three (3) consecutive weeks~~].

(2) The advertisements required in subsection (1) of this section shall clearly indicate the following:

(a) The proposed change;

(b) The proposed effective date of the change; and

(c) [~~shall state~~] That any person desiring to protest may do so by filing a protest with the department[~~. The protest shall be filed~~] in accordance with the administrative regulations of the department.

(3) The first required notice shall be published on or before the date on which the application is filed with the department;

(4) [~~and~~] The second and third required notice shall be published during the next two (2) succeeding calendar weeks.

(5)(a) Not later than ten (10) days subsequent to the third publication of the advertisement, the applicant shall file with the department an affidavit, in duplicate, to the effect that the required notice has been given.

(b) The affidavit shall be accompanied by a copy or copies of the advertisements.

Section 4. Protests and Other Pleadings. (1) General.

(a) All protests, pleadings, motions and other papers shall be filed with the department in duplicate and shall be typewritten and double-spaced on white eight and one-half (8 1/2) inches by eleven (11) inches paper, properly styled with the matter to which they are relative, and the docket number assigned thereto by the department, if any.

(b) Any protests, pleadings, motions, or other papers may be printed and, if printed, need not be double-spaced.

(c) Pleadings, protests, motions, or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(d) Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit.

(e) The attorney's signature shall constitute a certification that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay.

(f) If the matter is not signed or is signed with the intent to defeat the purpose of this administrative regulation, it may be stricken as sham and false, and the matter may proceed as though there had been no filing.

(g) All protests shall state the ground of the protest and the reasons therefor.

(h) That which is not filed in conformance with the requirements of this subsection [~~herewith~~] shall not be considered or accepted as a matter of record.

(2) Filing. The date and time of filing a protest or any other papers with the Division of Hearings [~~Office of General Counsel~~] shall be indicated thereon by the department. If the date on which any protests, pleadings, motions or other papers shall be filed is Saturday, Sunday, or a legal holiday, the date for filing shall be the close of the next regular business day of the department.

(3) Time of filing. All protests shall be filed with the department at least ten (10) days before the date set for the hearing in the matter except:

(a) A protest to a time schedule change shall be filed not later than five (5) days before the effective date of the proposed time schedule change;

(b) A protest to a proposed change in the existing tariff of carriers of household goods [~~property~~] shall be filed not later than fifteen (15) days after the proposed tariff change is filed with the department;

(c) A protest to a proposed change in existing fares of carriers of passengers shall be filed at least ten (10) days before the proposed effective date of the proposed change.

(4) Service of pleadings and other papers. Any person who files a protest, pleading, complaint or other paper, shall serve a copy

thereof upon the applicant, respondent, or initiating party and shall certify to the department that the service has been accomplished.

(5) Withdrawal. Any person who desires to withdraw an application, protest, pleading or other paper may do so upon written notice to the department and to the interested parties as soon as possible. A notice of withdrawal shall be in conformance with the requirements of this administrative regulation.

(6) Replies to protests. If a protest to a proposed change in the existing tariff of a carrier of property is filed, the carrier requesting the proposed change may file a reply to the protest within ten (10) days of the filing of the protest.

(7) If no protests or other pleadings are filed within the time prescribed, the department may determine the case on the basis of affidavits. The procedure to be followed is set forth in 601 KAR 1:031.

Section 5. Continuances. (1) All hearings shall be held on the day set by the notice issued by the department. A change in the hearing date shall not be made [~~No change will be made in a hearing date~~] except:

(a) Upon agreement of all interested parties with approval of the **hearing officer** [~~department~~]; or

(b) Upon order of the **hearing officer** [~~department~~] for any reasons deemed necessary or advisable.

(2) If the continuance is granted prior to the expiration of the protest period, thirty (30) days' notice shall be given of any hearings which may thereafter be called in the matter, and further protests shall be allowed to be filed in accordance with the requirements of this administrative regulation. If the continuance is granted after the expiration of the protest period, the hearing may be reset at any time provided that not less than ten (10) days' notice of the hearing be given, and no further protests shall be received.

Section 6. General Practice. (1) Appearances. If an appearance by an applicant **or protestant** is not made at a hearing on the application, the **hearing officer shall proceed in accordance with KRS 13B.080(6). If an application is denied or dismissed pursuant to KRS 13B.080(6),** [~~application may be denied or dismissed, and if it is denied or dismissed,~~] a similar application by the same applicant shall not be entertained until six (6) months have elapsed. [~~If a protestant does not appear in person or by legal counsel at the hearing on the matter in which the protest is filed, the protest shall not be considered as a part of the record.~~]

(2) Adjournment. The hearing may be adjourned to a future day for just cause shown, or with consent of the parties, or by the examiner on his own motion and order.

(3) Service on attorney. When a party has appeared by an attorney, all communications, notices, pleadings, etc., shall be sent to the attorney. Service on the attorney shall be considered as service on the party. The department shall be notified of any change in attorney.

(4) **Evidence. The hearing officer shall admit evidence in accordance with KRS 13B.080 and 13B.090.** [~~Proof. Evidence at all hearings shall be by oral testimony, except upon special permission of the examiner designated by the department to hold the hearing.~~]

(5) Prepared statements. Prepared statements may be received in evidence, but copies thereof shall have been furnished the hearing examiner, reporter, and all parties a reasonable time before their receipt into evidence, so that any objections may be made before the statements are made a part of the record.

(6) Exhibits. All exhibits filed during a hearing shall be filed in duplicate and a copy thereof shall be furnished to each party, unless otherwise ordered by the hearing examiner.

(7) Stipulations. Parties to any proceeding before the department, may, by stipulation entered in the record, agree upon the facts therein or any portion thereof. It is desirable that facts be thus agreed upon whenever practicable. Those stipulations shall not be binding on the department, nor upon the parties who are not parties to the stipulation, and the examiner may require additional evidence if he deems if necessary.

(8) Qualification of witnesses. Witnesses shall not be permitted to give opinion evidence unless they have first qualified to show that their special familiarity and knowledge with the subject entitles them to express an opinion which will be helpful to the department.

(9) [~~Evidence. Any evidence which would be admissible under the statutes of the State of Kentucky, and under rules of evidence followed by the circuit courts of the State of Kentucky, shall be generally admitted by the examiner in hearings before the department. However, subject to the discretion of the examiner, information may be admitted that may be of assistance in determining the rights of the parties.~~

~~(10)~~] Transcript.

(a) The examiner holding a hearing may, in any case, in his discretion, order the taking of a transcript of the hearing.

(b) If a case is [~~Should a case be~~] protested or contested in any manner, a transcript of the testimony, exhibits, statements and arguments shall be made.

(c) When a transcript is ordered by the examiner or is required by this administrative regulation, it shall be the duty of the party instituting the proceeding to provide the stenographic reporter for its transcription.

(d) If the party instituting the proceeding fails to provide a reporter or if a substitute reporter cannot be provided within one (1) hour of the time scheduled for the hearing, the hearing examiner may dismiss **or continue** the proceeding.

(e) The reporter shall furnish an original of the transcript to the department.

(f) All transcripts shall be indexed to show the location of the testimony of each witness and all exhibits.

(g) The cost of transcribing the evidence and of furnishing an original of the transcript to the department shall be borne by the parties to the hearing and shall be prorated between or among them, on the basis of testimony, cross-examination, and statements put in the record by each party.

(h) Additional copies of the transcript may be purchased from the reporter at the entire cost of the party desiring same. The department shall not issue a recommendation or final order until the original of the transcription of all hearings have been received in the Division of Hearings [~~Office of General Counsel~~].

(10) [~~(11)~~] Exclusion of witnesses. Upon request of a party or on the examiner's own motion, witnesses may be ordered excluded from the hearing room. Principals including owners, officers, partners, or directors may remain in the hearing room subject to the approval of the hearing examiner.

(11) [~~(12)~~] Briefs. The department may receive briefs, if a party desires to submit one (1) and is allowed to do so by the examiner, or the examiner may require the filing of briefs, which briefs when submitted may be answered by the opposition and shall be considered in the determination of the matter. The time for filing of the briefs and replies shall be set by the examiner at the close of the hearing.

(12) [~~(13)~~] When matter may be reopened. In addition to the provisions of KRS 281.775 any matter may be reopened at any time by the department if it is found that fraud, or any act, or omission of an act, amounting to a fraud, has been perpetrated; or if it appears that the laws and administrative regulations were not compiled with by any party or by the department, and if it appears that the rights of any person have been prejudiced thereby.

(13) [~~(14)~~] Subpoenas. Any applicant, protestant, or other party, who desires to summon and compel the attendance at any hearing of any witness or witnesses, or who desires the production in evidence of any books, records, papers, etc., may procure the issuance of a subpoena or a subpoena duces tecum or orders of personal attendance by application to the hearings clerk of the Division of Hearings [~~Office of General Counsel~~]. **The hearings clerk shall issue the subpoena with the approval of the hearing officer.**

If ~~[unless]~~ the hearing in connection with which the subpoena or subpoena duces tecum or order of personal attendance is sought is in progress, in which case application shall be made to the examiner conducting the hearing. Applications for subpoenas or subpoenas duces tecum or orders of personal attendance shall be made in the manner provided by the appropriate sections of the Kentucky Rules of Civil Procedure, and upon their issuance shall be served as provided in Rule 45.03 of the Kentucky Rules of Civil Procedure. Cost of service shall be paid by the party at whose instance the issuance was made. However, it shall be the duty of the person desiring the attendance of a witness to see that the witness is present at the time and place of the hearing; the failure of the witness to appear, whether subpoenaed or not shall not constitute grounds for the continuance of the hearing.

~~[(15) Affidavits. When affidavits relative to the character of persons are required to be filed with an application, the affidavits shall be from reputable persons who have known the applicant for a sufficient length of time to become reasonably acquainted with the applicant's character, both moral and professional.]~~

(14) ~~[(16)]~~ Restrictive amendments. An applicant may offer a restrictive amendment which is reasonable, enforceable and consistent with the public interest prior to, during or after any hearing held on its application. The restrictive amendment shall be in writing meeting the requirements of Section 4 of this administrative regulation or be given before a stenographic reporter who shall provide a transcribed copy of the proposed restrictive amendment to the department. Acceptance of a restrictive amendment shall be by the commissioner of the department or a properly designated representative of the commissioner. The department reserves the right to reject any restrictive amendment, notwithstanding any prior acceptance, that would be unreasonable, adverse to the public interest, would be unenforceable, would make no difference in the application or would otherwise adversely affect the administration of the motor carrier laws. The department shall provide a copy of an order accepting or denying a restrictive amendment request to the applicant, protestants and other parties to the proceedings.

Section 7. Report and Recommended Order. (1) Upon the conclusion of a hearing, the examiner shall make a report and recommended order which shall contain findings of fact and conclusions of law together with recommended grant or denial or partial grant or denial of authority, rates, fares or changes of time schedules, when necessary.

(2) The report and recommended order shall be issued within ninety (90) days of receipt of all transcripts, documents, or evidence upon which the hearing examiner is to base his opinion.

(3) Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 8. Exceptions and Replies Thereto. (1) Any party to a hearing may, within twenty (20) days after the date of the report and recommended order, file and serve his exceptions to the report and recommended order ~~[thereto]~~.

(2) The exceptions shall conform to the requirements of this administrative regulation.

(3) Exceptions shall consist of as many objections to the whole or any part of the report as the party filing the exception desires to make, with each objection numbered.

(4) Each objection shall fully state the nature thereof and the grounds therefor.

(5) Parties filing exceptions shall serve a copy thereof upon every other party participating in the hearing, and shall certify to the department that this service has been accomplished.

(6) Replies to exceptions shall be filed within twenty (20) days after service of the exceptions, if any party desires to make a reply.

(a) The reply shall conform to the requirements of this administrative regulation.

(b) The reply shall consist of a separate reply to each objection set out in the exception.

(c) Any party filing a reply shall serve a copy thereof on every other party participating in the hearing and shall certify to the department that this service has been accomplished.

Section 9. Final Order. (1) Upon the filing of the exceptions and replies thereto or upon expiration of the time for filing of same, the examiner shall render the complete record to the commissioner or assistant commissioner, who shall consider and pass upon the case **within the ninety (90) day time period set out in KRS 13B.120(4)**.

(2) The commissioner or assistant commissioner may, after a study of the case, refer it back to the examiner and request the taking of more proof on any point in issue.

(3) The commissioner or assistant commissioner may require oral argument of the case.

(4) When passed upon by the commissioner, or when passed upon by the assistant commissioner and approved by the commissioner, the decision shall be served by mail upon all parties and shall be a final order of the department. The final order shall contain the date of its rendition.

(5) At the time a certificate is granted, the final order granting it may approve a time schedule and a schedule of rates, fares and charges filed by the applicant or a time schedule or a schedule of rates, fares, and charges determined by the department which, when approved, shall be at the time schedule and the schedule of rates, fares and charges upon which the carrier shall operate until the department has approved a change or modification thereof.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: January 11, 1996
FILED WITH LRC: February 15, 1996 at 9 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Hearings
(As Amended)

601 KAR 1:031. Procedure when no protest to notice of first-notice hearing is filed.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.801, 49 USC 11501
NECESSITY AND FUNCTION: KRS 281.801 allows affidavits to be filed in lieu of holding a formal hearing on an application when no protests on the application are received within the time prescribed by 601 KAR 1:030. This administrative regulation sets forth the procedures to be followed by both the applicant and the Transportation Cabinet when affidavits are to be filed which present the testimony of the applicant and the applicant's witnesses.

Section 1. If an application for motor carrier authority or a change to motor carrier authority has been set for hearing by the Transportation Cabinet and no protest is filed in accordance with 601 KAR 1:030, the cabinet may cancel the hearing. In this case the cabinet shall by order of the hearings clerk cancel the hearing and require that the applicant submit evidence by affidavit showing that there is a need for the service and that it is fit, willing and able to perform this service.

Section 2. The order of the hearings clerk shall set the date no sooner than thirty (30) days from the date of the order that the affidavits shall be filed with the Division of Hearings ~~[Office of General Counsel]~~. If the applicant fails to file the affidavits within the thirty (30) days or fails to show good cause why the time should be extended,

he shall be deemed in default and the application may be dismissed by the Commissioner of the Department of Vehicle Regulation.

Section 3. Style of Affidavit. The supporting statements filed by and on behalf of the applicant shall collectively contain at least the following information:

(1) Name and address of the motor carrier who has filed the application for authority;

(2) Statement of character and reputation of the applicant **from reputable persons who have known the applicant for a sufficient time to become reasonably acquainted with the applicant's character, both moral and professional;**

(3) [and] A brief history of the applicant's prior work history, including any experience in providing transportation services;

(4) [(3)]Statement whether household goods [~~Description of the specific commodity~~] or passengers are to be transported;

(5) [(4)] [~~Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;~~

~~(5)~~] A statement of how the transportation service, if any, is now obtained and how it was obtained in the past; and

(6) [~~(5)~~] [~~(6)~~] A recital of the consequences if this transportation service is not made available.

Section 4. Upon receipt of the affidavits the hearing examiner shall make a report and recommended order which shall contain findings of fact and conclusions of law together with recommended grant or denial or partial grant or denial of authority, rates, fares or changes of time schedules, when necessary. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 5. After the report and recommended order is filed the matter shall proceed as set forth in 601 KAR 1:030 and KRS 281.625.

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: January 11, 1996
FILED WITH LRC: February 15, 1996 at 9 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Division of Hearings
(As Amended)

601 KAR 1:040. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission.

RELATES TO: KRS Chapter 281, **281.615, 281.617, 218.618, 281.619, 281.620, 281.625, 281.627, 281.637, 281.650, 281.660,** 49 CFR Part 1023

STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 1023, 49 USC 11501

NECESSITY AND FUNCTION: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of interstate motor carriers operating in Kentucky pursuant to authority granted by the Interstate Commerce Commission.

Section 1. Kentucky Intrastate Passenger or Household Goods Authority. (1)(a) All applications for operating authority to engage in Kentucky intrastate commerce relating to the transportation of persons or household goods shall be made on the form, "Application for Operating Authority" form TC 93-13 effective October, 1994 [~~April, 1993~~]. This form is incorporated by reference **in Section 8** [~~as a part~~] of this administrative regulation.

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(c) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A hearing shall not be called or authority issued upon an incomplete application.

[~~(5) The form TC 93-13 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Division of Hearings [Office of General Counsel], State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548.~~]

Section 2. Temporary Authority Applications. (1)(a) Applications for temporary authority shall be made to the department by petition filed in duplicate.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated.

(d)1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may submit a waiver from each carrier authorized to serve the area sought or any part thereof by filing a letter from each of the carrier waiving any objection to the temporary grant of authority.

(2) If the application is for authority as a contract bus carrier, there shall also be filed with the petition verified statements from a supporting passenger [~~shipper or shippers~~]. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) [~~Description of the specific commodity or passengers to be transported;~~

~~(e) Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service~~

~~is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;~~

~~(f)~~] A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(e) [~~(g)~~] How soon the transportation service is needed and the reasons for the time limit;

(f) [~~(h)~~] How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;

(g) [~~(i)~~] Statement of the consequences if this transportation service is not made available and the circumstances which create an immediate and urgent need for the requested service; and

(h) [~~(j)~~] Whether efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed above if one (1) of the following conditions exists:

(a) There are no existing carriers with authority within the scope and area of the application;

(b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) There are unusual and emergency conditions; or

(d) The application is for temporary approval under KRS 281.632(2).

(4) If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1) All applications for approval to transfer a certificate or permit issued by the Department of Vehicle Regulation authorizing Kentucky intrastate commerce shall be accompanied by a filing fee of twenty-five (25) dollars. The application shall be made on "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective October, 1994 [~~April, 1993~~]. This form is incorporated by reference **in Section 8** [~~as a part~~] of this administrative regulation. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010. All applications shall be sworn to by the applicant or a responsible official acting for the applicant. A hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

[~~(6) The form TC 93-17 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Division of Hearings, [Office of General Counsel,] State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548.~~]

Section 4. Interstate Operating Authority - Exempt, For-hire. (1)(a) All for-hire motor carriers transporting commodities that have been exempted from the authority requirements of the Interstate Commerce Commission or are performing transportation functions that are exempt from the authority of the Interstate Commerce Commission shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate authorizing this interstate exempt transportation.

(b) All applications for this certificate shall be made on the form, TC 95-12, as revised January, 1995," [~~effective August, 1993, "FORM A,~~] Uniform Application for Registration by ICC [~~of~~] Motor Carriers Exempt from ICC Regulations". **This form is incorporated by reference in Section 8 of this administrative regulation.**

(c) The application shall be accompanied by:

1. A twenty-five (25) dollar filing fee; and

2. A statement of reasons the transportation activities are exempted from federal regulation.

(2)(a) All applications and exhibits shall be typewritten or printed legibly in ink.

(b) Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(c) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.

(3) If the motor carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate restricted to the federally exempted activities as may be appropriate.

(4)(a) When the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.

(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.

[~~(5) The form TC 95-12 may be obtained free of charge from the Transportation Cabinet's Department of Vehicle Regulation, Division of Motor Carriers located on the third floor of the State Office Building, 501 High Street, Frankfort, Kentucky. Their mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-4540.~~]

Section 5. Interstate Operating Authority - For-hire Motor Carriers Authorized by the Interstate Commerce Commission. (1) 49 CFR Part 1023 as effective May 18, 1993 shall govern the registration of the for-hire motor carriers which meet the following criteria:

(a) Those whose principal place of business is Kentucky; and

(b) Those which are operating in interstate commerce pursuant to authority granted by the Interstate Commerce Commission.

(2) The "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of for-hire motor carriers operating pursuant to authority granted by the Interstate Commerce Commission.

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 CFR Part 1023.

(4) The Kentucky fee for the issuance of the registration receipt required by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

(5) The "Procedure Manual for the Single State Registration System" is incorporated by reference **in Section 8** [~~as a part~~] of this

administrative regulation. [~~A copy of it may be viewed or copied at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.~~]

Section 6. Contract Bus Carrier Permit; Intrastate. (1) All applications for operating authority to engage in intrastate commerce as a contract carrier shall be made on the form incorporated by reference in Section 1 of this administrative regulation and be in conformity with this administrative regulation and 601 KAR 1:045.

(2) Each application shall include:

(a) A filing fee of twenty-five (25) dollars; and

(b) Two (2) copies of the contract under which the applicant desires to operate.

(3) The contracts shall be executed by the applicant/buyer and seller or applicant and passenger [~~shipper~~], and shall set out:

(a) The rates applicable;

(b) The extent and scope of the activity covered by the contract; and

(c) The minimum number of persons to be transported [~~amount of freight to be shipped~~].

(4) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(5) At least one (1) of the contract copies shall have original signatures.

(6) The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department; and

(b) Made a part of the permit[~~; and~~

~~(c) Briefly set out on the vehicle identification card carried in the vehicle operated by the contract carrier~~].

(7)(a) When the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.

(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.

Section 7. Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICC. All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property [~~or passengers~~] in intrastate commerce, by an applicant who is a single state operator but also desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority.

Section 8. **Incorporation by reference. (1) The following material is incorporated by reference:**

(a) "Application for Operating Authority", form TC 93-13, October 1994 edition;

(b) "Application for Approval of Transfer of Certificate or Permit", form TC 93-17, October 1994 edition;

(c) "Uniform Application for Registration by ICC Motor Carriers Exempt from ICC Regulations", TC 95-12, January 1995 edition; and

(d) "Procedure Manual for Single State Registration System", July 12, 1993 edition.

(2) Copies of the material incorporated in subsection (1)(a) and (b) of this section may be inspected, copied or obtained at the Division of Hearings, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-2548.

(3) Copies of the material incorporated in subsection (1)(c) of this section may be inspected, copied or obtained at the Division of Motor Carriers, Third Floor of the State Office Building, 501 East High Street, Frankfort Kentucky 40622. The mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-4540.

Section 9. Administrative Regulations Repeal. (1) 601 KAR 1:085, Annual reports, is hereby repealed.

(2) 601 KAR 1:090, Exempted commodities, is hereby repealed.

(3) 601 KAR 1:105, Off-route points and alternate routes, is hereby repealed.

(4) 601 KAR 1:170, Transportation of financial documents, is hereby repealed. [~~(1) An applicant who only wants to transport exempt commodities pursuant to 601 KAR 1:090 or KRS 281.625 shall apply on form TC 95-14, "Application for Kentucky Irregular Route Truck Certificate, Intrastate Authority - Exempt Commodities" last revised in August, 1993.~~

~~(2) The form TC 95-14 is incorporated by reference as a part of this administrative regulation. A copy of it may be viewed, copied, or obtained at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.~~]

NORRIS BECKLEY, Commissioner
FRED N. MUDGE, Secretary
APPROVED BY AGENCY: January 11, 1996
FILED WITH LRC: February 15, 1996 at 9 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended)

704 KAR 20:540. Professional certificate for directors [~~administrator~~] of pupil personnel and assistants [~~services~~].

RELATES TO: KRS **159.080,** 161.020, 161.028 [~~161.025~~], 161.030**, HB 327 (1996 GA)**

STATUTORY AUTHORITY: KRS 161.028 [~~156.070, 161.030~~]

NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025, and 161.030~~] requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, [~~Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education; 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 established by the Education Professional Standards Board [~~recommended by the council and approved by the state board~~]. This administrative regulation establishes the preparation and certification [~~an appropriate certificate~~] for administrator of pupil personnel services, establishes the requirements for a probationary certificate when a person holding certificate for administrator of pupil personnel services is not available, and provides for repeal of 704 KAR 20:100. [~~and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation Certification of Professional School Personnel.~~]

Section 1. (1) The Professional Certificate for Administrator of Pupil Personnel Services shall be issued in accordance with the pertinent Kentucky statutes and this [~~State Board for Elementary and Secondary Education~~] administrative regulation[~~s~~] to an applicant who has completed the approved program of preparation [~~which corre-~~

~~sponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 113.0~~].

(2) [~~As~~] Prerequisites for the program of preparation for the initial professional certificate for Administrator of Pupil Personnel Services[~~,~~] [~~the candidate~~] shall include:

(a) Admission [~~Have been admitted~~] to the preparation program on the basis of criteria developed by the teacher education institution. Program admission criteria shall include formal recommendations, grade point average, scores on standardized tests, and consideration by an admissions review committee [~~pursuant to TEC 113.0~~];

(b) [~~Have completed~~] Three (3) years of full-time teaching experience;

(c) A [~~Have completed the~~] master's degree as required by 704 KAR 20:020; and

(d) [~~Hold~~] A Kentucky teaching certificate. [~~Have been issued any one of the following standard teaching certificates: standard elementary certificate grades 1-8; standard certificate for teaching in the early elementary grades K-4; standard certificate for teaching in the middle grades 5-8; standard high school certificate grades 7-12; standard certificate for teaching in the secondary grades 9-12; standard certificate for teaching music grades K-12; or standard certificate for teachers of exceptional children (except those having speech and communications disorders as the specialty area).~~]

(3) The professional certificate for Administrator of Pupil Personnel Services shall be issued for a duration period of five (5) years. Each five (5) year renewal shall require the completion of two (2) years of experience as an administrator of pupil personnel services, three (3) semester hours of additional graduate credit related to the position of administrator of pupil personnel services, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Leadership Training Program provided in KRS 156.101.

Section 2. The approved program of preparation for the professional certificate for administrator of pupil personnel services shall consist of a fifteen (15) semester hour graduate program designed to prepare an administrator of pupil personnel services in the following performance standards:

(1) Performance Standard I. Leadership. The administrator of pupil personnel services guides, facilitates, and supports the removal of barriers to the instructional program;

(2) Performance Standard II. Legal. The administrator of pupil personnel services applies legal concepts, practices, administrative regulations, and resolves compliance issues for school operation;

(3) Performance Standard III. Pupil Accounting. The administrator of pupil personnel services complies with pupil accounting procedures prescribed by statute and administrative regulations; and

(4) Performance Standard IV. Networking and Related Support Services. The administrator of pupil personnel services identifies and utilizes appropriate school support programs, community agencies, and available resources.

Section 3. (1) If a person holding certification for administrator of pupil personnel services is not available as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one-year probationary certificate for an administrator of pupil personnel services who meets the following qualifications:

(a) A valid Kentucky classroom teaching certificate;

(b) A master's degree as required by 704 KAR 20:021;

(c) Three (3) years of successful teaching experience; and

(d) Admission to the preparation program for the professional certificate for administrator of Pupil Personnel services.

(2) Each annual renewal of the probationary certificate for administrator of pupil personnel services shall require completion of an additional nine (9) semester hours selected from the approved program.

Section 4. 704 KAR 20:100, Administrators and supervisors, is hereby repealed.

DANIEL GREENE, Chair
APPROVED BY AGENCY: February 26, 1996
FILED WITH LRC: February 29, 1996 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Health Services
(As Amended)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.100 to 218A.110, 21 CFR 1308.14

STATUTORY AUTHORITY: KRS 194.050(1), [~~211.090,~~] 218A.020, 218A.100, 218A.250

NECESSITY AND FUNCTION: KRS 218A.100 authorizes the Cabinet for Human Resources to place a substance in Schedule IV if it finds that: (1) the substance has a low potential for abuse relative to substances in Schedule III; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. [~~In addition,~~] KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice of the designation, rescheduling or deletion is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Human Resources, after considering the criteria, designates the substances set forth in this administrative regulation as Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Human Resources designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a [~~any~~] material, compound, mixture, or preparation which contains a [~~any~~] quantity of the following substances, including their salts, isomers [~~(~~]whether optical position or geometric[~~)~~], and salts of the isomers, if the existence of the salts, isomers, and salts of isomers is possible:

(1) Cathine ((+)-norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Pemoline, [~~(~~]including organometallic complexes and chelates [~~)~~];
(9) Phentermine;
(10) Pipradrol; and
(11) SPA ((-)-1-dimethylamino-1,2-diphenyl ethane).

Section 2. Depressants. The Cabinet for Human Resources designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a [~~any~~] material, compound, mixture, or preparation which contains a [~~any~~] quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;
(2) Bromazepam;
(3) Camazepam;
(4) Carisoprodol;

(5) Chlordiazepoxide;
(6) Clobazam;
(7) Clonazepam;
(8) Clorazepate;
(9) Clotiazepam;
(10) Cloxazolam;
(11) Delorazepam;
(12) Diazepam;
(13) Estazolam;
(14) Ethyl loflazepate;
(15) Fludiazepam;
(16) Flunitrazepam;
(17) Flurazepam;
(18) Halazepam;
(19) Haloxazolam;
(20) Ketazolam;
(21) Loprazolam;
(22) Lorazepam;
(23) Lormetazepam;
(24) Mebutamate;
(25) Medazepam;
(26) Methohexital;
(27) Midazolam;
(28) Nimetazepam;
(29) Nitrazepam;
(30) Nordiazepam;
(31) Oxazepam;
(32) Oxazolam;
(33) Pinazepam;
(34) Prazepam;
(35) Quazepam;
(36) Temazepam;
(37) Tetrazepam;
(38) Triazolam; and
(39) Zolpidem.

Section 3. Narcotics. The Cabinet for Human Resources designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, **a** [~~any~~] material, compound, mixture, or preparation containing **a quantity** [~~any~~] of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Butorphanol;

(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane); [~~and~~]

(3) [~~(2)~~] Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and

(4) Nalbuphine.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: February 5, 1996
FILED WITH LRC: February 22, 1996 at 4 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(Amended After Hearing)

907 KAR 1:675. Program integrity

RELATES TO: KRS 205.8453, 42 CFR 455.12, 455.13, 455.16(c)(4)

STATUTORY AUTHORITY: KRS 194.050, 205.6318, 205.8453, 42 CFR 455.12, 455.13, 455.16(c)(4), 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 in 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. KRS 205.8453(4) directs the Cabinet for Health Services to institute other measures necessary or useful in controlling fraud and abuse. This administrative regulation institutes an administrative process which provides due process prior to disqualification or request for repayment of Medicaid benefits paid on behalf of a **recipient** [~~responsible party~~]. Action taken under the administrative process shall not relieve the cabinet from pursuing criminal action through law enforcement officials. This administrative regulation sets forth the provisions relating to enhanced program integrity of the Medicaid Program. This administrative regulation applies to **all Kentucky Medicaid recipients.** [~~non-SSI responsible parties or SSI recipients who have been provided the opportunity of due process through the administrative hearing, following a period of lock-in status.~~]

Section 1. Definitions. (1) **"Benefits" means as defined in KRS 205.8451.**

(2) "Department" means the Department for Medicaid Services and its designated agents.

(3) [~~(2)~~] "Intentional program violation" means confirmation that a responsible party knowingly made a false or misleading statement, or misrepresented, concealed or withheld a fact or facts or committed a violation of any state or federal law relating to the Medicaid Program. In addition, a financial loss to the department resulted from:

(a) Ineligibility of the recipient after all possible determinations have been made for Medicaid Program eligibility; or

(b) The responsible party knowingly abused the Medicaid Program after full Medicaid benefits were established following a period in lock-in status. Provider abuse shall be handled in accordance with 907 KAR 1:671.

(4) [~~(3)~~] "Lock-in" means the program in which a recipient who has utilized Medicaid services at a frequency or amount that is not medically necessary may be restricted from receiving Medicaid services from anyone other than one (1) physician and one (1) pharmacy except for emergency services furnished to the recipient. A referral shall be required from the lock-in physician for other medical services or equipment.

(5) [~~(4)~~] "Penalty" or "penalties" mean an administrative action taken by the department which restricts or revokes a recipient's participation in the Medicaid Program or requires the repayment of the value of the benefits received[~~, or restricts access to or quantities of services, based on receipt of services for which the recipient was not otherwise entitled~~].

(6) "Recipient" means as defined in KRS 205.8451.

(7) [~~(5)~~] "Responsible party" means an individual who is either:

(a) A parent or legal guardian of a minor child **who is a Medicaid recipient**;

(b) A Medicaid recipient **who is eighteen (18) years old or older**;

(c) Spouse of a Medicaid recipient **who is eighteen (18) years or older**; [~~or~~]

(d) An individual who possesses a power of attorney for the **Medicaid** recipient**; or**

(e) A legal guardian for an incompetent adult Medicaid recipient.

Section 2. Preliminary Identification. (1) The department shall notify Medicaid Program recipients of changes in Medicaid policy for which they shall be held liable with respect to an intentional program violation in accordance with the criteria specified in this administrative regulation.

(2) [~~In accordance with KRS 205.8453, the department shall annually, at the time of Medicaid approval or when recertified for Medicaid Program benefits, notify Medicaid recipients in writing of:~~

~~(a) Proper use of medical services or supplies; and~~

~~(b) How a recipient of Medicaid benefits may access and utilize Medicaid services in the most cost effective manner.~~

~~(3)~~] Medicaid recipients shall be given a toll free number to report any allegation of possible fraud or abuse of the Medicaid Program by recipients or providers.

(3) [~~(4)~~] The department shall identify that a possible intentional program violation occurred [~~as defined in Section 1 of this administrative regulation~~] through:

(a) Computer matches;

(b) Collateral contacts;

(c) Hotline referrals;

(d) Quality control reviews; and

(e) Other valid reports or information previously unknown to the department.

(4) [~~(5)~~] The department shall, if information warrants:

(a) Interview the responsible party and request verification of any information previously unknown to the department for the specified period of time that the alleged **intentional program violation** [~~program loss~~] occurred;

(b) Allow the responsible party the opportunity to review and refute evidence obtained by the department;

(c) Calculate the value of the services rendered based on Medicaid payments made on behalf of the recipient for the time period that the **recipient received services through an alleged** intentional program violation [~~allegedly occurred~~]; and

(d) **Allow the responsible party to reimburse the Medicaid Program in full for all services received during a period of eligibility based on the intentional program violation; and**

(e) If the responsible party does not agree **to the repayment or** with the evidence he reviews, [~~a determination shall be made that the evidence warrants scheduling~~] a disqualification hearing **shall be scheduled**:

1. Provided **the department** [~~it~~] has documented evidence indicating that a responsible party appears to have committed an act of intentional program violation[~~, as defined in Section 1 of this administrative regulation~~]; and

2. Regardless of the current eligibility of the recipient.

Section 3. Advance Notice of Disqualification Hearing. (1) The department shall provide written notice in accordance with KRS Chapter 13B to the responsible party suspected of an intentional

program violation at least thirty (30) days before the date the administrative disqualification hearing is scheduled.

(2) The advance notice shall indicate an individual or organization who may be available to provide free legal representation.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the responsible party accused of intentional program violation.

(2) If the responsible party and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) If the responsible party fails to attend a disqualification hearing and is determined to have committed an intentional program violation, but a hearing official later determines that the responsible party or representative had good cause, as defined in subsection (4) of this section, for not appearing:

(a) The previous decision shall not remain valid;

(b) The department shall conduct a new administrative disqualification hearing; and

(c) The hearing official who originally ruled on the case may also conduct the new administrative disqualification hearing.

(4) The responsible party shall have ten (10) days after the date of the scheduled hearing to present good cause for failure to appear. Reasons for good cause shall include:

(a) The responsible party was away from home during the entire hearing advance notice time period;

(b) The responsible party is unable to read or to comprehend the hearing notice;

(c) The responsible party moved resulting in inadequate notice;

(d) Serious illness of the responsible party or immediate family member;

(e) The delay was determined to be no fault of the responsible party; or

(f) Failure on the part of the responsible party to receive notification.

(5) A hearing official shall enter a decision for good cause into the record in addition to the date and time of the rescheduled hearing as specified in subsection (3) of this section.

Section 5. Continued Participation in the Medicaid Program while Awaiting a Disqualification Hearing. A pending hearing shall not affect the recipient's right to participate in the Medicaid Program until the hearing official rules that the responsible party committed an intentional program violation and revokes the recipient's eligibility for those individuals currently receiving Medicaid benefits.

Section 6. Hearing Procedures. (1) The department shall conduct administrative disqualification hearings for a responsible party suspected of an intentional program violation in accordance with the requirements of KRS Chapter 13B and 42 CFR Part 431, Subpart E.

(2) If requested by the responsible party, other designated person or **his** [~~its~~] legal counsel, the department shall provide one (1) free copy of the portions of the case file that are relevant to the hearing.

(3) Within ninety (90) days of the date the responsible party is notified in writing that a hearing has been scheduled, the department shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the responsible party of the decision.

(4) The responsible party or legal representative shall be entitled to one (1) postponement not to exceed thirty (30) days from the date the administrative disqualification hearing was originally scheduled. The request for postponement shall be made at least ten (10) days in advance of the date of the scheduled hearing.

(5) If the hearing is postponed, the time limits specified in subsection (10) of this section shall be extended for as many days as the hearing is postponed.

(6) The hearing decision shall:

(a) Comply with federal law and regulation and shall be based on the hearing record;

(b) The hearing record shall comply with the requirements of KRS 13B.130; and

1. Be binding on the department in that the department shall bear the burden of proof based on the preponderance of evidence;

2. Summarize the facts of the case;

3. Specify the reasons for the decision; and

4. Identify:

a. The supporting evidence;

b. Kentucky Revised Statutory citations, if applicable;

c. Kentucky administrative regulations; and

d. Corresponding federal law.

(7) The responsible party or legal counsel and the **Department for Social Insurance** [~~Medicaid caseworker~~] shall each be notified in writing by the department of:

(a) The administrative disqualification hearing decision;

(b) The reasons for the decision;

(c) If a current recipient, the continuance or revocation of the Medicaid benefits for the recipient, and the amount of repayment due to the department as determined by the hearing official; and

(d) After notification of a hearing decision which upholds the department's action, the responsible party shall be notified of the right to pursue judicial review of the decision if the department's decision is upheld.

(e) If a judicial review results in the administrative disqualification hearing decision being overturned, the Medicaid benefits of the recipient shall be restored to the date of discontinuance and all repayment collected from the responsible person shall be returned.

(8) The hearing record shall be retained:

(a) For a period of three (3) years from the month of origin of each record, for program records; and

(b) For a period of three (3) years from the date of fiscal or administrative closure, for fiscal records and accountable documents.

(9) This hearing record shall be available to the responsible party, designated person or legal counsel during the normal business week, Monday through Friday, excluding state holidays from 8 a.m. through 4:30 p.m. (eastern standard time) for copying and inspection.

(10) One (1) copy of **the** hearing material shall be provided to the responsible party. If additional copies are required, an appropriate fee which approximates cost shall be paid by the responsible party in accordance with KRS 61.872.

Section 7. Exemptions from Disqualifications. (1) **Recipients** [~~Individuals~~] who shall be exempt from disqualification for an intentional program violation include:

(a) Children under eighteen (18) years of age; and

(b) Pregnant women.

(2) Individuals meeting the criteria for extraordinary circumstances, as specified in KRS 205.8455 and 205.8455(5), **may** [~~shall~~] be permitted to participate in the Medicaid Program on a restricted basis, in accordance with Section **11** [~~13~~] of this administrative regulation.

Section 8. Penalties for Intentional Program Violations. (1) If the disqualification hearing determines that the **responsible party** [~~recipient~~] committed an intentional program violation, the department shall:

(a) **Disqualify the recipient from participation in the Medicaid Program for a period not to exceed one (1) year or until all money expended for benefits by the department during the period of eligibility obtained by intentional program violation is repaid, whichever comes first.**

(b) Provide to the **responsible party** [~~recipient~~] a written notice prior to imposing the disqualification; [~~and~~]

(c) [~~(b)~~] Inform the **responsible party** [~~recipient~~] of the period of time for which **the recipient** [~~he~~] shall be disqualified; [~~and~~]

(d) [~~(c)~~] Advise the **responsible party** [~~recipient~~] when the disqualification shall take effect; and

(e) [~~(d)~~] Inform the **responsible party** [~~recipient~~] of the final value of the benefits received, as calculated at the time of the administrative disqualification hearing, which shall be repaid to the department.

[~~(e) Disqualify the recipient from the Medicaid Program, for intentional program violation in accordance with KRS 205.8455, for those persons receiving Medicaid benefits.~~]

(2) If **a** [~~the~~] determination of an intentional program violation is made through [~~either a signature on a disqualification waiver or~~] an administrative disqualification hearing, the department shall refer the case to the appropriate state agency for investigation. **If a** [~~At any time that~~] criminal **offense** [~~conduct~~] is suspected, cases shall be referred for possible prosecution. In order to facilitate criminal investigative action, the department shall, at the request of the state agency, provide:

(a) Access to, and free copies of, any records or information kept by the department or its contractors;

(b) Computerized data stored by the department or its contractors; and

(c) Access to any information, kept by providers, to which the agency is authorized as specified in 907 KAR **1:672** [~~1:671~~].

(3) If the recipient is no longer receiving Medicaid benefits, the notice shall inform the responsible party that the period of disqualification shall be deferred until the individual:

(a) Reapplies for Medicaid; and

(b) Is determined otherwise eligible for program benefits.

(4) A notice of their rights and eligibility status shall be provided to other Medicaid recipients residing in a household with a responsible party determined to have committed an intentional program violation.

Section 9. Repayment of Medicaid Benefits. (1) A responsible party shall be liable for the repayment of the value of the benefits when a determination is made that **the benefits were obtained by committing** an intentional program violation [~~has been committed~~].

(2) Repayment of the value of benefits shall be accomplished by:

(a) Lump sum payments.

1. If the responsible party states he is financially able to pay the entire amount of the claim at one (1) time, as a cash payment, the department shall collect a lump sum payment; however

2. The responsible party shall not be required to liquidate all of its resources to make this lump sum payment.

(b) Installments.

1. The department shall negotiate a payment schedule with the responsible party for repayment of any amounts of the claim not repaid through a lump sum payment.

2. Payment shall be accepted by the department in regular installments and shall be paid no later than the tenth day of the month.

(c) Civil action for garnishment or liens in a court of competent jurisdiction.

(d) A lien on any property owned by the recipient or the responsible party in accordance with KRS 205.8471. [~~; or~~

~~(d) Estate recovery; or~~

~~(e) Tax intercept.~~]

Section 10. Collecting Claims Against the Responsible Party. The department shall upon receipt of the hearing decision, initiate collection action against the responsible party unless the responsible party is unable to be located or has repaid the value of benefits owed to the department.

Section 11. Consideration of Extraordinary Circumstances during the Eligibility Revocation Period. (1) If a recipient, who is the responsible party for the Medicaid case has his eligibility revoked as a result of an intentional program violation, the remaining family members shall have eligibility determined for potential Medicaid benefits, in accordance with eligibility **criteria contained in Medicaid administrative regulations.** [~~verification in 907 KAR 1:004, 907 KAR 1:006 and 907 KAR 1:011.~~]

(2) The department may reinstate a recipient whose eligibility has been revoked due to an intentional program violation and has reapplied for benefits under extraordinary circumstances in accordance with KRS 205.8455 **and 907 KAR 1:677**. [~~An individual who is reinstated into the Medicaid Program shall be placed into the lock-in status.~~]

(3) If a recipient's eligibility has been revoked and then reinstated under extraordinary circumstances as specified in subsection (2) of this section, that person shall remain obligated to serve the period of ineligibility at a future time to be determined by the department.

(4) A determination of extraordinary circumstances due to pregnancy shall be made at the local Department for Social Insurance office for a recipient who provides a written statement from a physician verifying pregnancy.

Section 12. Appeal Rights. (1) **A** [~~No~~] further departmental administrative appeal shall **not** exist after an administrative disqualification hearing finds that an intentional program violation was committed;

(2) The responsible party may seek relief in a court of competent jurisdiction in accordance with KRS 13B.140.

(3) The period of disqualification may be subject to legal stay by:

(a) A court of competent jurisdiction; or

(b) Other injunctive remedy.

[~~Section 15. Implementation Date. The provisions of this administrative regulation shall be applicable February 1, 1996.~~]

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: May 6, 1996
FILED WITH LRC: May 7, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All Medicaid recipients who are identified through the administrative hearing process as having committed fraud or abuse of the Medicaid program.

(2) Direct and indirect costs or savings on the: The cost of repayment to the responsible parties would be the value of Medicaid benefits paid on their behalf if the administrative hearing process determines that an intentional program violation was committed by that individual.

(a) Cost of living and employment in the 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: It is difficult for the agency to determine the direct or indirect cost or savings as a result of this administrative regulation. The agency believes that there will be an additional cost to implement the provisions of this administrative regulation through additional hearings being held but should also experience savings through

repayments by those responsible parties, of which some were not eligible to receive benefits as determined through the administrative hearing process. The Medicaid agency will be required to forward the federal share of recouped benefits to the Health Care Financing Administration.

2. Continuing costs or savings: See Item #1.

3. Additional factors increasing or decreasing costs: See item #1.

(b) Reporting and paperwork requirements: There will be additional reporting and paperwork requirements as a result of this amendment which will include calculations for repayment amounts and paperwork leading to an administrative hearing being conducted, as well as notifications of the procedures outlined.

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

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

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

(a) 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: To ensure that Medicaid benefits are paid on behalf of a recipient who meets both technical and financial eligibility. If payments are found to be erroneous based on inaccurate information provided to the department or because of overutilization of Medicaid benefits, repayment will be requested and a disqualification imposed until the repayment amount is paid in full.

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

(c) If detrimental effect would result, explain detrimental effect: The detrimental effect would be that an ineligible recipient could have erroneous Medicaid benefits paid on their behalf and continued to be paid on their behalf because there is no administrative process to disqualify or control this individual from overutilization of Medicaid benefits.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: As stated in the Necessity and Function, only those SSI recipients who go through the administrative hearing process following a period of lock-in will be subject to disqualification procedures. For the most part, the administrative hearing process based on accurate eligibility determinations will be used for a non-SSI recipient.

(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.

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 (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(Amended After Hearing)

907 KAR 1:677. Medicaid recipient lock-in.

RELATES TO: KRS 205.8453, 42 CFR 431.54, 42 USC 1396(a), 1396 (a)(2)

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.6318, 42 CFR 431.54, 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 in 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. KRS 205.8453(4) and 205.6318(6) direct the cabinet to promulgate administrative regulations to identify misutilization of Medicaid services, to institute other measures necessary or useful in controlling fraud and abuse. ~~[Based on KRS 205.6318(6), the cabinet reviewed the efficiency and effectiveness of the current fraud and abuse detection and investigation process and determined the current lock-in system for recipients identified as misutilizers was inadequate in controlling or educating recipients who may have unknowingly abused the program. This administrative regulation sets forth the provisions to enhance program integrity through the lock-in program for Medicaid recipients.]~~ This administrative regulation sets forth the Medicaid lock-in provisions relating to recipient overutilization of the Medicaid Program.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services and its designated agents.

(2) "Emergency **services** [~~medical condition~~]" means **services for** a medical condition **for which a delay in treatment will likely result in the recipient's death, irreparable harm, immediate grave bodily harm, a life-threatening condition or permanent impairment of the recipient's health.** [~~manifesting itself by acute symptoms of sufficient severity (including severe pain) so that the absence of immediate medical attention may reasonably be expected to result in:~~

~~(a) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;~~

~~(b) Serious impairment to bodily functions; or~~

~~(c) Serious dysfunction of any bodily organ or part; or~~

~~(d) With respect to a pregnant woman who is having contractions:~~

~~1. That there is inadequate time to effect a safe transfer to another hospital before delivery; or~~

~~2. That transfer may pose a threat to the health or safety of the woman or the unborn child.~~]

(3) **"Fraud" means as defined in KRS 205.8451.**

(4) "Immediate grave bodily harm" means the condition that would result from failure to provide emergency [~~medical~~] services for an emergency medical condition.

(5) "Irreparable harm" means a medical condition characterized by chronic illness or body impairment which may result from a failure to provide medical services on an immediate or emergency basis.

[~~(4) "Intentional program violation" means confirmation that a responsible party knowingly made a false or misleading statement, or misrepresented, concealed or withheld a fact or facts or committed a violation of any state or federal law relating to the Medicaid Program. In addition, a financial loss to the department resulted from:~~

~~(a) Ineligibility of the responsible party after all possible determinations have been made for Medicaid Program eligibility; or~~

~~(b) The responsible party knowingly abused the Medicaid Program after full Medicaid benefits were established following a period in lock-in status. Provider abuse shall be handled in accordance with 907 KAR 1:671.~~]

(6) "Life-threatening condition" means a medical condition which may result in the death of the individual unless medical services are provided on an immediate or emergency basis.

(7) [~~(5)~~] "Lock-in" means **as defined in 907 KAR 1:002.** [~~the program in which a recipient who has utilized Medicaid services at a frequency or amount that is not medically necessary may be restricted from receiving Medicaid services from anyone other than their one (1) physician and one (1) pharmacy except for emergency services furnished to the recipient. A referral shall be required from the "lock-in" physician for other medical services or equipment.~~]

(8) "Nonlife-threatening condition" means a medical condition which would not result in the death of the individual if medical services are not provided on an immediate or emergency basis.

(9) [~~(6)~~] "Overutilization" means **as defined in 907 KAR 1:002.** [~~the use of program benefits clearly in excess of practice norms for the treatment of the beneficiary's medical problem or of that actually required for the severity of the beneficiary's medical problem.~~

~~(7) "Penalty" or "penalties" means an administrative action taken by the department which restricts or revokes a recipient's participation in the Medicaid Program or requires the repayment of the value of the benefits received, or restricts access to or quantities of services, based on receipt of services for which the responsible party was not otherwise entitled.~~

~~(8) "Responsible party" means a Medicaid recipient;~~

~~(9) "Transfer" means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include the movement of a individual who:~~

~~(a) Has been declared dead; or~~

~~(b) Leaves the facility without the permission of any such person.~~]

(10) "Provider" means as defined in KRS 205.8451.

(11) "Recipient abuse" means as defined in KRS 205.8451.

Section 2. Lock-in Program. (1) All complaints concerning possible recipient abuse or overutilization of Medicaid services by eligible recipients shall be referred **to the department** for investigation. A potential Medicaid Program abuser or overutilizer may be identified by:

(a) Caseworkers;

(b) Providers, including those that provide [~~services for~~] emergency **services** [~~medical conditions~~];

(c) The Attorney General's office;

(d) Hotline referrals;

(e) Surveillance and utilization review system reports showing utilization which exceeds a norm by at least a standard deviation; or

(f) Other staff or outside sources.

(2) If a recipient is identified as needing an overutilization review, an analysis **shall be** [~~is~~] made of that recipient's utilization of Medicaid services. If the review reveals that an individual has utilization that may be warranted in view of the individual's medical diagnosis, complicating conditions and treatment regime, the review shall be closed.

(3) If the review reveals that an individual does not have a medical condition, complicating condition or treatment regime to warrant the individual's higher than normal utilization, a second level review and investigation shall be conducted to determine if the recipient has **overutilized or** abused the Medicaid Program.

(4) Recipient **overutilization or** abuse of the Medicaid Program may be:

(a) Intentional; or

(b) May result from a lack of knowledge by the recipient regarding the proper use of medical services.

(5) If overutilization **or abuse** is determined to be the result of a lack of recipient knowledge regarding proper use of medical services, a letter shall be sent to the recipient advising of:

(a) The dangers of inappropriate utilization of medical services; and

(b) The importance of having one (1) physician responsible for directing an individuals medical care.

(6) **If the overutilization or abuse is determined to be intentional** The department shall notify the recipient in writing of the pending lock-in action. The letter shall:

(a) Explain the right to a hearing regarding the proposed lock-in decision in accordance with Section 3 of this administrative regulation; and

(b) Inform recipient of the date their lock-in status shall be implemented, if a hearing is not requested.

(7) **If a hearing is requested with regard to the proposed lock-in, action shall not be taken to lock the recipient in until a final hearing decision upholding the proposed lock-in action has been made.**

(8) A recipient who has [~~previously~~] been identified as **intentionally** abusing or overutilizing the Medicaid Program **based on an analysis of the recipient's medical history and utilization patterns shall be locked in to Medicaid providers including** [~~, whether based on:~~

~~(a) An analysis of the recipient's medical history from the Medicaid summary profile; or~~

~~(b) A hearing official's decision in accordance with 907 KAR 1:675, be locked into specific Medicaid providers including~~]:

(a) [~~1.~~] A physician; and

(b) [~~2.~~] A pharmacy.

(9) [~~(8)~~] The lock-in physician and pharmacy shall be selected by the department. The selected providers shall be accessible within

normal time and distance standards for the community in which the recipient lives.

(10) [(9)] A recipient identified as abusing or overutilizing the program shall be locked in for a minimum of **twelve (12)** [six (6)] months. After the lock-in period, periodic determinations to be performed every **twelve (12)** [six (6)] months or more frequently, as needed, shall be made to:

(a) Determine the effectiveness of the lock-in; and

(b) Determine whether the lock-in [payment] status shall continue for another **twelve (12)** [six (6)] month period.

(11) [(10)] Lock-in physicians shall serve as case managers for referrals to all health facilities and services, except for emergency services. A case management fee of ten (10) dollars shall be paid to the lock-in physician at the beginning of each month for each assigned lock-in recipient.

(12) [(11)] Designated lock-in providers shall remain effective for twelve (12) months. Changes in lock-in providers shall be permitted only upon:

(a) The request of the lock-in provider; [or]

(b) If the recipient moves out of the lock-in providers area; [or]

(c) If the recipient can show that it is inappropriate for **him** [the recipient] to be locked-in to a specific provider; [or]

(d) **If the lock-in provider withdraws from the Medicaid Program; or**

(e) For the convenience of the department.

(13) [(12)] The department shall consider whether or not a physician has contributed to overutilization when determining the selection for a lock-in physician or pharmacist.

(14) Except as provided for in subsection (15) of this section, a [(13) No] Medicaid payment shall **not** be made on behalf of a lock-in recipient for the following:

(a) Physician services provided by other than the lock-in physician or other medical services or supplies which have not been preauthorized through a referral from the lock-in physician;

(b) Prescription drugs prescribed by other than the lock-in physician or a physician authorized by the lock-in physician;

(c) Pharmacy services provided by other than the lock-in pharmacy; **or**

(d) **Emergency services provide for a nonlife-threatening condition or a condition that would not result in irreparable harm without prior approval of the lock-in provider, unless the provider has made a reasonable effort to obtain prior-approval from the lock-in provider.**

(15) Emergency services may be provided to prevent the death, irreparable harm, immediate grave bodily harm, a life-threatening condition, or a permanent impairment of the recipient's health without prior approval of the lock-in provider. [Except for services for emergency medical conditions shall be provided and Medicaid payment made in accordance with 907 KAR 1:014 and 907 KAR 1:015.]

(16) [(14)] The recipient **shall be issued a lock-in** ['s] Medicaid identification card **which specifies** [shall:

(a) Include a code which identifies his lock-in status; and

(b) Specify] the designated lock-in providers and lock-in limitations.

Section 3. Appeal Rights. A recipient who receives advance notice of a decision to place him in lock-in status shall have the right to request a hearing in accordance with **907 KAR 1:560** [KRS Chapter 13B] prior to lock-in action by the department.

[Section 4. Continued Pattern of Program Overutilization. If utilization patterns reflect that a responsible party, who has completed a period of lock-in status in accordance with this administrative regulation, may have committed an intentional program violation, administrative action shall be taken in accordance with 907 KAR 1:675.]

Section **4.** [5.] Fraud **and Abuse** Referral. At any point if a determination is made that fraud**, or abuse involving a substantial allegation or indication of fraud,** has likely occurred, the recipient's case shall be referred for investigation in accordance with KRS 205.8453(3) **and 205.8465**.

[Section 6. Implementation Date. The provisions of this administrative regulation shall be applicable February 1, 1996.]

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: May 6, 1996
FILED WITH LRC: May 7, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Anita Moore

(1) Type and number of entities affected: All Medicaid recipients who are identified as over-utilizing or misutilization of Medicaid benefits through sources outlined in this administrative regulation.

(2) Direct and indirect costs or savings on the: The cost to Medicaid recipients would not include a dollar amount for lock-in but rather would involve a primary care physician managing the recipient placed into lock-in which could reduce Medicaid costs if misutilization is determined to have occurred.

(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: There should be no additional compliance, reporting or paperwork requirements to the Medicaid recipient placed in lock-in status. There would be some sort of a referral from the primary physician required for those individuals placed in lock-in.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body: This amendment will have an effect on the administrative body in that there might be an increased in the number of complaints received on Medicaid recipients who are thought to be overutilizing or misutilizing their Medicaid benefits. This could cause an increase in the number of profile summaries required from the Surveillance and Utilization Review System Reports. In addition, some educational material will need to be developed and distributed to Medicaid recipients.

(a) Direct and indirect costs or savings:

1. First year:: It is difficult for the agency to determine the direct or indirect savings as a result of this amendment. The agency believes that a savings will be experienced due to the fact that medical services for those recipients determined to be overutilizing or misutilizing Medicaid benefits will be curtailed by the lock-in process.

2. Continuing costs or savings: See item #1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional reporting and paperwork requirements as a result of this amendment which will include obtaining summary profiles from the Medicaid payment system to determine whether overutilization or misutilization has occurred.

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

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

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

from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be 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: This administrative regulation should enhance the program integrity of the Medicaid program through a lock-in process whereby Medicaid recipients who have overutilized or misutilized the Medicaid program can be locked-in to one physician and one pharmacist. In order to receive Medicaid payments for any other medical services other than those in which an emergency medical condition exists, will require a referral from the primary physician. This process should benefit the recipient and the Medicaid program by providing medical services in the most cost efficient manner while preventing overutilization or misutilization from occurring.

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

(c) If detrimental effect would result, explain detrimental effect: If no action is taken by the agency, there is no effective mechanism to deter Medicaid recipients from overutilizing or misutilization of the Medicaid program. Currently, recipients are placed into lock-in but the current process has proven to be ineffective and inefficient. In addition, this administrative regulation brings the Cabinet into compliance with KRS 205.8453.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The lock-in provisions is an option available to states in the federal regulation 42 CFR 431.54. Lock-in procedures are currently in place but this administrative regulation enhances the existing program.

2. State compliance standards. The lock-in provisions is an option available to states in the federal regulation 42 CFR 431.54. Lock-in procedures are currently in place but this administrative regulation enhances the existing program.

3. Minimum or uniform standards contained in the federal mandate. At option, states may lock-in Medicaid recipients if specific criteria is met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. 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 (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS RECEIVED AS OF NOON, MAY 15, 1996

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amendment)

201 KAR 8:015. Registration of dental laboratories and technicians with board.

RELATES TO: KRS 313.010(4)
STATUTORY AUTHORITY: KRS 313.220
NECESSITY AND FUNCTION: Establishes guidelines for registration of dental laboratories and dental laboratory technicians with the Board of Dentistry.

Section 1. [~~Each dental laboratory owner, and dental laboratory technician already currently engaged in dental laboratory technology on March 1, 1975, shall be granted a certificate of authority upon proper application and upon payment of the proper fee to the board as required by KRS Chapter 313, and these administrative regulations.~~

~~Section 2. After March 1, 1976,~~] The board shall not register or renew a [~~issue a certificate of authority to any new~~] commercial dental laboratory unless the applying dental laboratory is operated under the direct and continual supervision of either an owner or manager who has maintained continuous registration with the board since March 1, 1976 or one (1) certified dental technician. Although a dental laboratory may employ any number of certified dental technicians, each dental laboratory shall have at least [~~only~~] one (1) certified dental technician or owner/manager as described in this section supervising that dental laboratory at all times. No such person [~~certified dental technician~~] shall supervise more than one (1) dental laboratory at any given time. A certified dental technician is an individual recognized as such by the "National Board for Certification" (official name of certifying agency). The board may place a dental laboratory or dental laboratory technician on probation, or deny, revoke, suspend, or refuse to renew the registration of [~~a certificate of authority to perform as~~] a dental laboratory or [~~as~~] a dental laboratory technician upon the board's determination that an applicant, registrant, or certificate holder has violated any provision of KRS Chapter 313 or these administrative regulations. Prior to the initiation of any action pertaining to the suspension, revocation, probation, or refusal to renew the certificate of authority to perform as a dental laboratory or as a dental laboratory technician, the board shall issue an order to cease and desist said violation. If the violation reoccurs after the issuance of such an order, the board shall take appropriate disciplinary action in accordance with KRS Chapter 313 and these administrative regulations.

Section 2. [~~3.~~] Any individual having completed two (2) years of training or having acquired two (2) years of practical experience in dental laboratory technology by employment in either a licensed dentist's office or in a commercial dental laboratory, or an individual having a degree in dental laboratory technology from an accredited school upon the completion of a two (2) year course of study shall be classified as a dental laboratory technician and is required to register with [~~obtain a certificate of authority from~~] the board in order to practice dental laboratory technology. No employee, other than a dental laboratory technician, shall be required to register. [~~obtain a certificate of authority from the board.~~]

Section 3. [~~4.~~] Each commercial dental laboratory shall pay a fee of fifty (50) dollars and each dental laboratory technician shall pay a fee of ten (10) dollars to the board before a registration certificate [~~of authority~~] shall be issued to the applicant. An additional fee of twenty-five (25) dollars for laboratories and five (5) dollars for technicians shall be paid if renewal applications are not received by December 31 of each year.

Section 4. [~~5.~~] Upon registration of [~~the granting of a certificate of authority to perform as~~] a dental laboratory, the board shall assign to that laboratory a registration number. The laboratory registration number shall appear on all invoices of the laboratory.

Section 5. If a dentist uses a commercial dental laboratory, the commercial laboratory must be [~~6. A dentist may use only the services of a commercial dental laboratory which is~~] duly registered with the board as required by KRS Chapter 313, and these administrative regulations. The dentist is required to keep on file in his/her office a copy of the current registration certificate for all laboratories with which he or she is doing business. If the board determines that a dentist has violated this administrative regulation, the board shall issue an order pursuant to KRS 313.220(5) requiring that such dentist cease and desist said violation. If the violation reoccurs after the issuance of such an order, the board shall take appropriate disciplinary action in accordance with KRS Chapter 313, and these administrative regulations.

Section 6. [~~7.~~] All commercial dental laboratories operating, doing business or intending to operate or do business within this state shall register with the board and pay the fee required by the board. A dental laboratory shall be considered as operating or doing business in this state if its work product is prepared pursuant to a written authorization originating within this state.

STEPHEN T. SCHULER, DMD, President
APPROVED BY AGENCY: May 11, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 28, 1996, at 10101 Linn Station Road, Suite 540, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 23, 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 canceled. 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: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Gary Munsie
(1) Type and number of entities affected: Approximately 406 commercial dental laboratories, approximately 1363 commercial dental technicians, and approximately 2625 dentists who hold licenses to practice in the Commonwealth of Kentucky.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: This amended regulation requires a dentist to retain in his/her office a copy of the current registration for each commercial dental laboratory with which the dentist does business.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amended regulation establishes a penalty for late renewals which have caused administrative hardships in the past. This amended regulation will also allow for more efficient and quicker audits of the records of dentists to determine compliance with Kentucky law.

1. First year:

2. Continuing costs or savings: This amended regulation will save the administrative agency some time and expense of processing late renewals by reducing the number of late renewals and will compensate the agency for the time and expense of processing future late renewals by those who do not timely renew.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This amended regulation eliminates the term "certificate of authority" which has limited use and utility.

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amended regulation clarifies who may supervise a commercial dental laboratory.

(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: No effect

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? None. One class of applicants qualifies and applies.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amendment)

201 KAR 8:150. Examination; application.

RELATES TO: KRS 313.040

STATUTORY AUTHORITY: KRS 313.220

NECESSITY AND FUNCTION: Sets forth guidelines for filing of application by candidates for licensure [~~the clinical examination~~] and sets forth guidelines for examination. [~~the manner in which the application is to be filed with the Kentucky Board of Dentistry.~~]

Section 1. (1) [~~Applicants for any examination before the board will be given a number by the secretary and they shall be known to the other members of the board by number only; applicant's number must appear upon his or her questions and answers papers before turning in same to the examiners.~~

~~(2)~~] Application form, for general practice of dentistry, [~~hereto attached, shall be a part of this rule and~~] shall be filled out in its entirety by all applicants; same shall be executed and sworn to before a notary and returned to the [~~secretary of the~~] Kentucky Board of Dentistry. [~~Applicants graduating during the present school year shall file their applications with the secretary of the board not less than thirty (30) days prior to the date of the examination. Applicants who shall have graduated in a school year prior to the date of the board examination will be required to file their application with the secretary of the board not less than sixty (60) days prior to the date of the examination.~~] The board [~~secretary~~] shall reject any and all applications that are not properly filled out and sworn to and meet all requirements as provided in the rules of the board and KRS Chapter 313.

(2) [~~(3)~~] The examination shall consist of two (2) parts; a written examination, and a clinical examination.

Section 2. Incorporation by Reference. Application to practice dentistry. A copy of this application may be obtained at the board office, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223. Office hours are 8 a.m. to 4:30 p.m.

[~~Application No. _____~~

~~APPLICATION FOR EXAMINATION~~
~~before the~~
~~KENTUCKY BOARD OF DENTISTRY~~
~~FOR A LICENSE TO PRACTICE DENTISTRY~~
~~in the~~
~~COMMONWEALTH OF KENTUCKY~~

~~Examination Date _____~~

~~To the Kentucky Board of Dentistry:~~

~~I hereby apply for permission to take an examination at your next annual examinations to demonstrate my qualifications to practice dentistry in the Commonwealth of Kentucky. I enclose herewith the required fee of fifty (50) dollars (certified check or post office money order) and furnish below the information required by you, to which my affidavit is added at the end.~~

~~PHYSICAL DESCRIPTION~~

~~Name (Print in full) _____ Age in years _____~~
~~Date of Birth _____ Place of Birth _____~~
~~Present Residence _____~~
~~Race _____ Native of _____ Complexion _____~~
~~Color of Eyes _____ Color of Hair _____ Height _____~~
~~Stout ___ Medium ___ Thin ___ (check) Weight _____~~
~~Citizen of the United States? _____~~
~~By birth or naturalization? _____~~
~~If naturalized, give date and place of naturalization _____~~
~~_____ Has surname ever been changed? _____~~
~~If so, give date and place _____~~
~~Give original surname _____~~

~~PREDENTAL EDUCATION~~

(Give title and location of the college of liberal arts and science in which you were prepared for the study of dentistry, the length of the course you pursued and the degree, if any, you secured. Append hereto a transcript of your predental college record officially certified by the proper authority of that institution.)

_____

_____

_____

DENTAL EDUCATION

(Fill out blanks indicated and append hereto a transcript of your record in dental school or college, officially certified by the proper authority of that institution.)

Dental School or College from which you graduated_____
Date of graduation_____Degree received_____
Record of attendance in Dental School or College:

1st Yr.: From the _____ day of _____, 19__ to the _____ day of _____, 19__
2nd Yr.: From the _____ day of _____, 19__ to the _____ day of _____, 19__
3rd Yr.: From the _____ day of _____, 19__ to the _____ day of _____, 19__
4th Yr.: From the _____ day of _____, 19__ to the _____ day of _____, 19__

PRACTICE OF DENTISTRY

(Give below full account with dates and places of any previous practice of dentistry by you, either on your own account or in the employment of others.)

_____

_____

Date, number and sources of any previous license or licenses to practice dentistry in Kentucky or any other states or territory:

_____

_____

If you have ever been examined and refused a license, give full particulars.

_____

_____

If any dental license held by you has ever been cancelled or revoked in any state or territory, give full particulars:

_____

_____

I submit herewith a bust photograph of myself taken within the past six months which is certified by one of the following: The Dean of the dental school from which I graduated; the Secretary of the Board of Dental Examiners of the state in which I am now practicing; or the Secretary of the State or Local Dental Society of which I am a member.

(Attach photograph in space below.)

I hereby certify that the accompanying photograph is that of the person making this application for examination for licensure to practice dentistry.

PHOTO

Signature_____
Official Title_____

AFFIDAVIT

State of_____)
)ss.
County of_____)

On this ____ day of _____ 19___, personally appeared before me,_____, who being sworn, says that he is the person referred to in the foregoing application for admission to an examination to demonstrate his qualifications to practice dentistry in the Commonwealth of Kentucky; that the statements herein contained are strictly true in every respect; that he has never been convicted of a felony or a misdemeanor involving moral turpitude; that he is not addicted to the liquor or drug habit; that he has read and understands this affidavit; and that if this petition is granted and a license subsequently issued to him, he will comply with the laws governing the practice of dentistry in the Commonwealth of Kentucky and do his utmost to uphold and maintain the dental profession.

_____
(Signature of applicant)

Signed and sworn to before me this ____ day of _____, 19____.

_____
(Official designating officer administering oath)

INSTRUCTIONS

NOTE: This application, properly filled out and certified, together with the fee of fifty (50) dollars, must be in the hands of the Secretary of the Kentucky Board of Dentistry not less than (see below)* days before the examination. The application should be accompanied by a bust photograph of the applicant taken within six months of the date of the application and certified by an officer of the dental school from which he graduated, the Secretary of the Board of Dental Examiners of the state in which he may be practicing, or by an officer of a state or local dental society of which he may be a member.

*RECENT GRADUATES: Applicants graduating during the present school year must file their applications with the Secretary of the Board by April 1st. In the event an applicant fails to graduate after having filed his application, the full examination fee will be returned promptly.

*APPLICANTS IN PRACTICE: Applicants having graduated prior to the present school year are required to file their applications with the Secretary of the Board sixty (60) days in advance of the examination date. This is to allow ample time to check at the sources of the information given. It is required that you submit with this application letters of recommendation from the Secretary of your state or local district dental society; the Dean of the dental school from which you graduated; and the Secretary of the Board of Examiners in the state in which you are now located, attesting to your record as a practitioner in that state. The applicant should insert here the address to which correspondence from this Board is to be sent:

_____

IMPORTANT:) Make all checks and money orders
) payable to:
) KENTUCKY STATE TREASURER
)
) Address all correspondence to and
) submit application and fee to:
) KENTUCKY BOARD OF DENTISTRY

~~} 2106 Bardstown Road~~
~~} Louisville, Kentucky 40205~~]

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: March 9, 1996
FILED WITH LRC: May 10, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 28, 1996, at 10101 Linn Station Road, Suite 540, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 23, 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 canceled. 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: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie

(1) Type and number of entities affected: Approximately 130 applicants.

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

(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 amended regulation will decrease the amount of time spent processing new licensure applications each year as only relevant and pertinent information will be asked and answered on the licensure application.

(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: This amended regulation will lessen the reporting and paperwork required to relevant and pertinent information.

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

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

(8) Assessment of expected benefits:

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

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

(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 current licensure application is outdated insofar as it seeks information possibly violative of the americans with disabilities act. The current licensure application also does not ask for needed information, is often misinterpreted, and requires the assignment of a test number to each licensure applicant which is outdated as the board does not administer a licensure test.

(11) TIERING: Is tiering applied? No. One class of applicants qualifies and applies.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amendment)

201 KAR 8:260. Dental hygiene; application.

RELATES TO: KRS 313.300
STATUTORY AUTHORITY: KRS 313.270
NECESSITY AND FUNCTION: Sets forth guidelines for filing of application by candidates for [~~the clinical examination for~~] licensure in dental hygiene; and, sets forth guidelines for examination. [~~the manner in which the application is to be filed with the Kentucky Board of Dentistry.~~]

Section 1. (1) [~~Applicants for any examination before the board will be given a number by the secretary and they shall be known to the other members of the board by number only; applicant's number must appear upon his or her questions and answers papers before turning in same to the examiners.~~

~~(2)~~] Application form for the practice of dental hygiene, [~~hereto attached, shall be a part of this rule and~~] shall be filled out in its entirety by all applicants, same shall be executed and sworn to before a notary and returned to the [~~secretary of the~~] Kentucky Board of Dentistry. [~~Applicants graduating during the present school year shall file their applications with the secretary of the board not less than thirty (30) days prior to the date of the examination. Applicants who shall have graduated in a school year prior to the date of the board examination will be required to file their application with the secretary of the board not less than sixty (60) days prior to the date of the examination.~~] The board [~~secretary~~] shall reject any and all applications that are not properly filled out and sworn to and meet all requirements as provided in the rules of the board and KRS Chapter 313.

(2) [~~(3)~~] The examination for licensure shall consist of two (2) parts; a written examination, and a clinical examination.

Section 2. Incorporation by Reference. Application to practice dentistry. A copy of this application may be obtained at the board office: 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223. Office hours are 8 a.m. to 4:30 p.m.

[~~Application No. _____~~

~~APPLICATION FOR EXAMINATION~~
~~before the~~
~~KENTUCKY BOARD OF DENTISTRY~~
~~FOR A LICENSE TO PRACTICE DENTAL HYGIENE~~

in the
COMMONWEALTH OF KENTUCKY

Examination Date _____

To the Kentucky Board of Dentistry:

I hereby apply for permission to take an examination at your next annual examinations to demonstrate my qualifications to practice dental hygiene in the Commonwealth of Kentucky. I enclose herewith the required fee of twenty-five (25) dollars (certified check or post office money order) and furnish below the information required by you, to which my affidavit is added at the end.

PHYSICAL DESCRIPTION

Name (Print in full) _____ Age ___ years
Date of Birth _____ Place of Birth _____
Present Residence _____
Race _____ Native of _____ Complexion _____
Color of Eyes _____ Color of Hair _____ Height _____
Stout ____ Medium ____ Thin ____ (check) Weight _____
Citizen of the United States? ____ By birth or naturalization? ____
If naturalized, give date and place of naturalization:
_____
Has surname ever been changed? _____
If so, give date and place _____
Give original surname _____
If married, give husband's full name and permanent address

PREPARATORY EDUCATION

(Give name and location of the high school from which you were graduated, and the name and location of any college attended, along with the course you pursued and the degree, if any, you secured. Append hereto a transcript of your high school and college records, officially certified by the proper authority of the institution concerned.)

Name of high school _____ Location _____
Years attended _____ Date graduated _____
Name of college _____ Location _____
Years attended _____ Course pursued _____
Degree secured _____ Date _____

EDUCATION IN DENTAL HYGIENE

(Fill out blanks indicated and append hereto a transcript of your record in school of dental hygiene officially certified by the proper authority of that institution.)

School of dental hygiene from which you graduated _____
Date of graduation _____ Degree received _____
Record of attendance in School of dental hygiene:

1st Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__
2nd Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__
3rd Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__
4th Yr.: From the _____ day of _____ 19__ to the _____ day of _____ 19__

PRACTICE OF DENTAL HYGIENE

(Give below full account with dates and places of any previous practice of dental hygiene by you, either on your own account or in the employment of others.)

_____
_____
_____

Date, number and sources of any previous license or licenses to practice dental hygiene in Kentucky or any other states or territory:

_____
_____

If you have ever been examined and refused a license, give full particulars.

_____
_____

If any license to practice dental hygiene held by you has ever been cancelled or revoked in any state or territory, give full particulars:

_____
_____

I submit herewith a 2" x 2" photograph of myself taken within the past six months which is certified by one of the following: The Dean or director of the school of dental hygiene from which I graduated; the Secretary of the Board of Dental Examiners of the state in which I am now practicing.

(Attach photograph in space below.)

I hereby certify that the accompanying photograph is that of the person making this application for examination for licensure to practice dental hygiene.

PHOTO

Signature _____
Official Title _____

AFFIDAVIT

State of _____ }
} ss.
County of _____ }

On this _____ day of _____ 19__, personally appeared before me, _____, who being sworn, says that she is the person referred to in the foregoing application for admission to an examination to demonstrate her qualifications to practice dental hygiene in the Commonwealth of Kentucky; that the statements herein contained are strictly true in every respect; that she has never been convicted of a felony or a misdemeanor involving moral turpitude; that she is not addicted to the liquor or drug habit; that she has read and understands this affidavit; and that if this petition is granted and a license subsequently issued to her, she will comply with the laws governing the practice of dental hygiene in the Commonwealth of Kentucky and do her utmost to uphold and maintain the profession of dental hygienist.

_____
(Signature of applicant)

Signed and sworn to before me this ___ day of _____, 19__.

(SEAL)

_____
(Official designating officer administering oath)

~~INSTRUCTIONS~~

~~NOTE: This application, properly filled out and certified, together with the fee of twenty-five (25) dollars, must be in the hands of the Secretary of the Kentucky Board of Dentistry not less than (see below)* days before the examination. The application should be accompanied by letters of recommendation from two reputable dentists of this state and a 2" x 2" photograph of the applicant taken within six months of the date of the application and certified by an officer of the school of dental hygiene from which she graduated, or the Secretary of the Board of Dental Examiners of the state in which she may be practicing.~~

~~*RECENT GRADUATES: Applicants graduating during the present school year must file their applications with the Secretary of the Board by April 1st. In the event an applicant fails to graduate after having filed her application, the full examination fee will be returned promptly.~~

~~*APPLICANTS IN PRACTICE: Applicants having graduated prior to the present school year are required to file their applications with the Secretary of the Board sixty (60) days in advance of the examination date. This is to allow ample time to check at the sources of the information given. It is required that you submit with this application letters of recommendation from the Dean or director of the school of dental hygiene from which you graduated; and the Secretary of the Board of Examiners in the state in which you now are located, attesting to your record as a practitioner in that state. The applicant should insert here the address to which correspondence from this Board is to be sent:~~

~~ADDRESS:_____~~

~~{ Make all checks and money orders pay-~~
~~{ able to:~~
~~{ KENTUCKY STATE TREASURER~~
~~{~~
~~IMPORTANT: { Address all correspondence to and submit~~
~~{ application and fee to:~~
~~{ KENTUCKY BOARD OF DENTISTRY~~
~~{ 2106 Bardstown Road~~
~~{ Louisville, Kentucky 40205]~~

STEPHEN T. SCHULER, D.M.D., President

APPROVED BY AGENCY: March 9, 1996

FILED WITH LRC: May 10, 1996 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 28, 1996, at 10101 Linn Station Road, Suite 540, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 23, 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 canceled. 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: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie

(1) Type and number of entities affected: Approximately 97 applicants.

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

(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 amended regulation will decrease the amount of time spent processing new licensure applications each year as only relevant and pertinent information will be asked and answered on the licensure application.

(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: This amended regulation will lessen the reporting and paperwork required to relevant and pertinent information.

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

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

(8) Assessment of expected benefits:

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

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

(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 current licensure application is outdated insofar as it seeks information possibly violative of the americans with disabilities act. The current licensure application also does not ask for needed information, is often misinterpreted, and requires the assignment of a test number to each licensure applicant which is outdated as the board does not administer a licensure test.

(11) TIERING: Is tiering applied? No. One class of applicants qualifies and applies.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amendment)

201 KAR 8:330. Hygienists' temporary retirement; reinstatement.

RELATES TO: KRS 313.260
STATUTORY AUTHORITY: KRS 313.260
NECESSITY AND FUNCTION: Permits dental hygienists to retire their license when no longer actively engaged in the practice of dental hygiene; sets forth guidelines for retirement of such license; sets forth guidelines for suspension of dental hygiene license if not renewed by December 31 [~~March 1~~] of each year.

Section 1. (1) Any licensed dental hygienist who desires temporarily to retire from practice and who has given the board notice in writing to that effect, shall be granted such a retirement. Such a license shall be reinstated upon request and after payment of accumulated renewal fees and cost of reinstatement.

(2) Any license granted by the board shall be suspended if the holder fails to secure the renewal certificate by December 31 [~~March 1~~] of each year, but any license thus suspended may be restored by the board upon the payment [~~to the secretary-treasurer~~] of a reinstatement fee of twenty-five (25) dollars within one (1) year after the suspension.

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: March 9, 1996
FILED WITH LRC: May 10, 1996 at 1 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 28, 1996, at 10101 Linn Station Road, Suite 540, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 23, 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 canceled. 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: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie
(1) Type and number of entities affected: Approximately 5 hygienist reinstatements.
(2) Direct and indirect costs or savings on the: 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:
(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 amended regulation will decrease the amount of time spent processing hygienists' reinstatements as the renewal date will be changed to conform to the renewal date of all hygienists.
(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: None
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None
(a) Geographical area in which administrative regulation will be implemented:
(b) Kentucky:
(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.
(8) Assessment of expected benefits: None
(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: 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. One class of applicants qualifies and applies.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:010. Definitions.

RELATES TO: KRS 316.030(6)(c), (7), 316.150(3)(b), (c) [~~316.010, 316.040, 316.090~~]
STATUTORY AUTHORITY: KRS 316.210(1) [~~(4)~~]
NECESSITY AND FUNCTION: This administrative regulation defines terms used in KRS 316.030 and 316.150. [~~throughout KRS Chapter 316 and the administrative regulations governing the Kentucky Board of Embalmers and Funeral Directors.~~]

Section 1. "Full-time" [~~Definitions. (1) "All his working hours"~~] for an apprentice means regular employment in a licensed funeral establishment in this state. Regular employment shall involve at least forty (40) working hours per week to be accumulated under actual working conditions and under the personal supervision of a licensed embalmer or [~~and~~] licensed funeral director holding a valid Kentucky license. Employment shall be regular and steady employment and shall not be secondary to any other employment or educational pursuit. Working hours shall not include time spent by an apprentice "on call".

[~~(2) "Dishonest dealings" means any statement or act by a licensee which demonstrates a lack of integrity.~~

~~(3) "Fraudulent dealings" means any statement or act by a licensee that is a violation of any state or federal law governing funeral directing or embalming practices.~~]

Section 2. "Operating [~~(4) "Operation of~~] a funeral establishment" means the management of a funeral establishment including, but not

limited to, the daily activities of funeral directing, embalming, bookkeeping, and supervision of employees.

[~~(5) "Unprofessional dealings" means any statement or act by a licensee which is unfair, false, misleading, or deceptive to the public.~~]

Section 3. 201 KAR 15:060, Annual license renewal, late renewal, and reinstatement, is hereby repealed.

Section 4. 201 KAR 15:100, Schools recognized by the board, is hereby repealed.

JOHN G. BARKER, President

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of June, 1996, at 10 a.m. in Capitol, 700 Capitol Avenue, Room 141, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of June, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Grant, Assistant Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, Telephone: (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Grant

(1) Type and number of entities affected: Approximately 1850 licensed embalmers and funeral directors, approximately 500 licensed funeral establishments, approximately 200 apprentice embalmer and funeral directors, and approximately 60 to 80 applicants for embalmer and funeral director licenses 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is amended to modify definitions and to delete regulations for compliance with 1996 revisions to KRS Chapter 316. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(10) Any additional information or comments: No additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because of uniform treatment under the law.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:030. [~~Application for examination;~~] Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5) [~~316.050~~]

STATUTORY AUTHORITY: KRS 316.210(1) [~~(4)~~]

NECESSITY AND FUNCTION: KRS 316.125 and 316.130 require the board to set out in administrative regulations certain fees. The function of this administrative regulation is to set these fees. [~~Sets forth the procedure for making application to take the Funeral Director's or Embalmer's examination.~~]

Section 1. The funeral establishment license fee is $100. [~~Application for Examination; fees. An applicant for funeral director's or embalmer's examination shall file his application, under oath, with the board for examination on a form prescribed by the board at a time not later than thirty (30) days prior to the date set by the board for such examination. Such application shall include sworn statements by the licensed funeral director and licensed embalmer under whom the required apprenticeship was served as sworn proof that same was actually served as required by law governing funeral directors and embalmers in Kentucky. The application shall be accompanied with a fee of thirty five (35) dollars for each examination. This fee shall include license in good standing for the remainder of the fiscal year if the applicant is successful in his examination.~~]

Section 2. The embalmer's license renewal fee is thirty (30) dollars.

Section 3. The funeral director's license renewal fee is thirty (30) dollars.

Section 4. The late fee for a funeral establishment license renewal is $100.

Section 5. The late fee for an embalmer's license renewal or a funeral director's license renewal is thirty (30) dollars.

JOHN G. BARKER, President
APPROVED BY AGENCY: May 1, 1996
FILED WITH LRC: May 13, 1996 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of June, 1996, at 10 a.m. in Capitol, 700 Capitol Avenue, Room 141, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of June, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Grant, Assistant Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, Telephone: (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Grant
(1) Type and number of entities affected: Approximately 1850 licensed embalmers and funeral directors and approximately 500 licensed funeral establishments.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Licensing fees have a slight impact on the cost of doing business.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.
2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No direct or indirect costs or savings for the first year.
2. Continuing costs or savings: No continuing costs or savings.
3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.
(4) Assessment of anticipated effect on state and local revenues: Licensing fees are considered state revenue.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.
(b) Kentucky: No economic impact is anticipated in Kentucky.
(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is amended to set certain fees. No other alternatives were deemed appropriate.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.
(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.
(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(10) Any additional information or comments: No additional information or comments.
(11) TIERING: Is tiering applied? Tiering was not applied because of uniform treatment under the law.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:040. Examination.

RELATES TO: KRS 316.030(3)(h), (4)(g) [~~316.050, 316.070~~]
STATUTORY AUTHORITY: KRS 316.210(1) [~~(4)~~]
NECESSITY AND FUNCTION: KRS 316.030(3)(h), (4)(g) require an applicant for an embalmer's license or a funeral director's license to pass examinations prepared or approved by the board. [~~This administrative regulation is necessary to comply with KRS 13A.100(2) which requires that the process for matters for which an application would be appropriate be prescribed by administrative regulation.~~] The function of this administrative regulation is to establish the procedure, content, and time of examinations. [~~the Funeral Director's and Embalmer's examination.~~]

Section 1. Content of Examination. (1) The examination for a license to practice embalming and the examination for a license to practice funeral directing shall be [~~a~~] written examinations administered by one (1) or more members of the board [~~of Embalmers and Funeral Directors~~].
(2) The subjects to be covered in the examination for embalmer's license shall be as follows:
(a) Embalming;
(b) Anatomy;
(c) Microbiology;
(d) Pathology;
(e) Chemistry;
(f) Restorative art;
(g) Mortuary administration and law;
(h) Accounting;
(i) Sociology; and
(j) Psychology.
(3) The subjects to be covered in the examination for funeral

director's license shall be as follows:

(a) Mortuary administration;

(b) Ethics;

(c) Accounting;

(d) Sociology;

(e) Business law;

(f) Primary psychology;

(g) Transportation rules;

(h) Hygiene, ~~and~~ sanitation, and disinfection; and

(i) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316. ~~Disinfection and fumigation.~~

(4)(a) The board may accept the results of the examination prepared and administered by the Conference of Funeral Service Examining Board and the results of an oral examination on the subject of embalming administered by one (1) or more members of the board ~~National Board Examination of Embalmers~~ in lieu of the written examination for embalmer's license administered by the board.

(b) The applicant seeking to take an ~~the~~ examination administered by the board shall submit the fee required by KRS 316.030(3)(g) or (4)(f) to the board ~~for embalmer or funeral director shall file an application, along with the required fee, with the board~~ at least thirty (30) days before the date of the examination ~~and shall present himself before the board for further examination as may be required~~. The fee shall include a license in good standing for the remainder of the fiscal year if the applicant is successful in the examination.

Section 2. Procedure for Examination. (1) Applicants shall attain a proficiency of seventy-five (75) percent on any ~~the~~ examination to make a passing grade.

(2) All written questions for the embalmer's and funeral director's examinations are the property of the board and applicants shall return the questions to the board with their answers.

Section 3. Time of Examinations. (1) Examinations administered by the board shall normally be held for funeral director's and embalmer's licenses at the regular meeting of the board in December and June of each year.

(2) Examinations may be held at other regular or special meetings at the board's discretion.

(3) An applicant shall be entitled to only one (1) examination for each ~~the~~ fee ~~of thirty-five (35) dollars~~.

JOHN G. BARKER, President

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of June, 1996, at 10 a.m. in Capitol, 700 Capitol Avenue, Room 141, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of June, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Grant, Assistant Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, Telephone: (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Grant

(1) Type and number of entities affected: Approximately 60 to 80 applicants for embalmer and funeral director licenses 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is amended to comply with 1996 revisions to KRS Chapter 316. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(10) Any additional information or comments: No additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because of uniform treatment under the law.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:050. Apprenticeship requirements.

RELATES TO: KRS 316.030(3)(e), (4)(d), (8) [~~316.040, 316.090~~]
STATUTORY AUTHORITY: KRS 316.210(1) [~~(4)~~]
NECESSITY AND FUNCTION: KRS 316.030(3)(e) and (4)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(8) requires an applicant to file sworn statements semiannually during the apprenticeship. [~~The necessity of promulgating this administrative regulation is to comply with the provisions of KRS Chapter 13A.~~] The function of this administrative regulation is to establish the time for filing the sworn statements and the additional information required in the sworn statements. [~~requirements for apprentices seeking to qualify for licensure as an embalmer or funeral director.~~]

Section 1. An applicant serving an apprenticeship shall file the sworn statements required by KRS 316.030(8) [~~(1)~~] on or before May 1 and November 1 of each year relating to [~~, every registered apprentice shall file with the board a statement of the training the apprentice has received during~~] the six (6) month period ending with the preceding middle of April or middle of October respectively. [~~, on a form available from the board.~~

~~(2) Failure of the apprentice to timely file a completed form with the board in compliance with this administrative regulation and KRS 316.040 may, in the discretion of the board, cause the forfeiture of the apprenticeship served during the reportable period.~~

~~(3) Failure of the apprentice to have all report forms completed and filed with the board at the time of making application for examination shall disqualify the applicant from taking the embalmer and funeral director examinations.~~]

Section 2. The sworn statements by the applicant serving an apprenticeship shall include [~~apprenticeship report forms shall require the apprentice to provide~~] the following information:

(1) [~~The name of at least one (1) professional magazine read by the apprentice each month;~~

~~(2) The name of at least one (1) textbook studied by the apprentice during each six (6) month period;~~

~~(3) An attached review written by the apprentice of at least one (1) textbook studied by the apprentice during each six (6) month period;~~

~~(4)~~] The names and dates [~~number~~] of funerals [~~services~~] in which the applicant for a funeral director's license [~~apprentice funeral director~~] assisted in managing during each six (6) month period;

(2) [~~(5)~~] The names and dates [~~number~~] of embalming cases in which the applicant for an embalmer's license [~~apprentice embalmer~~] assisted [~~with the care and preparation~~] during each six (6) month period; [~~and~~]

(3) [~~(6)~~] The names of the service items in which the applicant [~~apprentice~~] assisted during each six (6) month period;

(4) With the initial sworn statement, an attached report written by the applicant on the requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316; and

(5) With subsequent sworn statements, an attached report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period.

[~~Section 3. (1) The apprenticeship report forms provided by the board to the apprentice shall be accompanied by a written explanation of the training program to ensure that the apprentice and the sponsoring funeral director and embalmer fully understand the objectives of the training program.~~

~~(2) The report forms filed by each apprentice shall be reviewed by the board to determine whether the training was adequate and in conformity with the requirements of KRS Chapter 316 and this administrative regulation.~~]

JOHN G. BARKER, President
APPROVED BY AGENCY: May 1, 1996
FILED WITH LRC: May 13, 1996 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of June, 1996, at 10 a.m. in Capitol, 700 Capitol Avenue, Room 141, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of June, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Grant, Assistant Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, Telephone: (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Grant
(1) Type and number of entities affected: Approximately 200 apprentice embalmer and funeral directors.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.
2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No direct or indirect costs or savings for the first year.
2. Continuing costs or savings: No continuing costs or savings.
3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.
(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical

area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is amended to comply with 1996 revisions to KRS Chapter 316. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(10) Any additional information or comments: No additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because of uniform treatment under the law.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:080. Complaints of violations.

RELATES TO: KRS 316.150

STATUTORY AUTHORITY: KRS 316.210(1) [~~(4)~~]

NECESSITY AND FUNCTION: KRS 316.150 permits the board to take disciplinary action against the license of an embalmer, a funeral director, or a funeral establishment or against the registration of an apprentice for violations of KRS Chapter 316. [~~The necessity of promulgating this administrative regulation is to comply with the provisions of KRS Chapter 13A.~~] The function of this administrative regulation is to establish the procedure for filing complaints of violations with the board. [~~of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316 with the Kentucky State Board of Embalmers and Funeral Directors.~~]

Section 1. Complaint. (1) A complaint that an embalmer, a funeral director, a funeral establishment, or an apprentice [~~a person~~] (respondent) has violated the provisions [~~failed or refused to obey the requirements~~] of KRS Chapter 316 [~~or the administrative regulations of the board~~] shall be made in writing to the board.

(2) The complaint shall be signed by the person (complainant) making the complaint.

(3) The complainant need not be a licensed embalmer or funeral director.

Section 2. Notice to Respondent. (1) The board shall [~~may~~] send a notice with a copy of the complaint to the respondent requesting a written response [~~reply~~] to the complaint.

(2) The [~~Upon request,~~] respondent shall file a written response [~~reply~~] to the complaint with the board within twenty (20) days after receipt of notice of the complaint.

[~~(3) Failure of the respondent to file a timely reply to the complaint shall constitute a violation of a board order and an administrative regulation of the board and shall be grounds for disciplinary action under KRS 316.150(1)(g).~~]

Section 3. Investigation of Complaint. (1) The board may, if it deems appropriate, assign one (1) or more persons to conduct an investigation of the facts alleged in a complaint and submit a report to the board.

(2) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of KRS Chapter 316 [~~or the administrative regulations of the board~~].

(3) The board may dismiss a complaint at any time if the board determines that the facts stated in the complaint, or facts known to the board after investigation, fail to warrant disciplinary action. The board shall notify the complainant and the respondent if it dismisses the complaint. [~~establish a violation of KRS Chapter 316 or the administrative regulations of the board.~~]

JOHN G. BARKER, President

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of June, 1996, at 10 a.m. in Capitol, 700 Capitol Avenue, Room 141, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of June, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Grant, Assistant Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, Telephone: (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Grant

(1) Type and number of entities affected: Approximately 1850 licensed embalmers and funeral directors, approximately 500 licensed funeral establishments, and approximately 200 apprentice embalmer and funeral directors.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on

reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is amended to comply with 1996 revisions to KRS Chapter 316. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(10) Any additional information or comments: No additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because of uniform treatment under the law.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:090. Hearings.

RELATES TO: KRS Chapter 13B, 316.155

STATUTORY AUTHORITY: KRS 13B.170, 316.210(1) [~~(4)~~]

NECESSITY AND FUNCTION: KRS 316.155 requires the board to conduct hearings in accordance with KRS Chapter 13B. KRS 13B.170 permits an agency to promulgate by administrative regulation supplemental procedures relating to hearings. [~~This administrative regulation is necessary to comply with KRS 13A.100 which requires that the board prescribe procedures to be utilized in the conduct of hearings by the board.~~] The function of this administrative regulation is to establish supplemental [~~hearing~~] procedures relating to hearings.

Section 1. Any attorney representing a party before the board shall file a written notice of entry of appearance with the board before practicing in a matter before the board. [~~A party may:~~

~~(1) Represent himself; or~~

~~(2) Be represented by an attorney.~~]

Section 2. A subpoena may be served by any person over eighteen (18) years of age or by certified mail, return receipt requested. [~~Presiding Officer. (1) The presiding officer shall be:~~

~~(a) The president of the board; or~~

~~(b) Any person designated by the chairman to serve as the presiding officer.~~

~~(2) The presiding officer may:~~

~~(a) Issue subpoenas;~~

~~(b) Authorize the taking of depositions;~~

~~(c) Require production of documents;~~

~~(d) Administer oaths;~~

~~(e) Examine witnesses;~~

~~(f) Render decisions on motions, requests, or other matters that do not result in a final disposition of the complaint;~~

~~(g) Receive evidence; and~~

~~(h) Take other action required in the conduct of hearings.~~]

Section 3. (1) At the board's discretion, the hearing shall occur before only a hearing officer or before the board with a hearing officer. [~~A presiding officer or board member may be disqualified for:~~

~~(a) Bias or prejudice;~~

~~(b) Conflict of interest;~~

~~(c) Violation of the provisions of statutes or administrative regulations governing board hearings; or~~

~~(d) Other causes for which a judge may be disqualified.~~]

(2) If the hearing occurs before the board with a hearing officer, the board shall deliberate on the matter in closed session at the conclusion of hearing. The hearing officer may be present during the board's deliberations and shall advise the board about legal issues and legal conclusions supported by the board's factual findings, but shall have no vote in the deliberations. The decision of the board shall be by majority vote. The hearing officer shall draft the board's findings of fact, conclusions of law, and final order consistent with the board's deliberations for the board's approval at the next board meeting or as soon thereafter as directed by the board. [~~(a) A party may make a written motion to disqualify a presiding officer or board member upon:~~

~~1. Receipt of notice of the identity of the presiding officer; or~~

~~2. Discovery of facts establishing grounds for disqualification of the presiding officer or board member.~~

~~(b) The motion shall state the facts or reasons supporting it.~~]

Section 4. Upon request, the hearing officer may exclude witnesses from the hearing so that they may not hear the testimony of the other witnesses, but a party or the board's investigator may not be excluded. [~~Evidence. (1) Formal rules of evidence shall not apply.~~

~~(2) The presiding officer may exclude evidence that is:~~

~~(a) Irrelevant;~~

~~(b) Immaterial;~~

~~(c) Unduly repetitious; or~~

~~(d) Excludable on:~~

~~1. Constitutional or statutory grounds; or~~

~~2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.~~

~~(3) Testimony or other evidence may be admitted if it is:~~

~~(a) Based on facts; and~~

~~(b) Commonly relied upon by reasonably prudent persons.~~

~~(4) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing other relevant evidence.~~

~~(5) The presiding officer may admit party or witness testimony taken by deposition if:~~

~~(a) A party or witness is unable to attend through no fault of his own; and~~

~~(b) The opposing party has had a full opportunity to cross-examine the party or witness.~~

~~(6) Evidence may be received in written form if it will:~~

~~(a) Expedite the hearing; and~~

~~(b) Not substantially prejudice the interest of a party.~~

~~(7) Official notice may be taken of:~~

~~(a) A fact that would be judicially noticed in the courts of the Commonwealth;~~

~~(b) The record of other proceedings before the board;~~

~~(c) Technical or scientific matters within the specialized knowledge of the board; and~~

~~(d) Codes or standards that have been adopted by:~~

~~1. An agency of the United States, the Commonwealth, or another state; or~~

~~2. A nationally recognized organization or association that has been incorporated by reference as provided by KRS Chapter 13A.~~]

Section 5. As determined by the hearing officer or by the board, its president, or other designated board member, continuances of hearings may be granted upon good cause shown. [~~Separation of Functions. A person shall not participate as a board member in the adjudication of a matter, or serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing, if he has served as an investigator, prosecutor, or complainant with regard to the subject matter of the hearing.~~]

Section 6. Any matter may be referred to mediation with or without the consent of the parties or counsel. No statements or admissions made solely during mediation shall be admitted into evidence during a hearing. [~~Procedure at Hearing. A hearing shall proceed as follows unless altered by the presiding officer:~~

~~(1) Opening statements by:~~

~~(a) Board or its counsel; and~~

~~(b) Respondent or respondent's counsel.~~

~~(2) Board presentation of:~~

~~(a) Witnesses; and~~

~~(b) Evidence.~~

~~(3) Respondent's presentation of:~~

~~(a) Witnesses; and~~

~~(b) Evidence.~~

~~(4) Closing arguments by:~~

~~(a) Board or its counsel; and~~

~~(b) Respondent or respondent's counsel.~~

~~(5) The presiding officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.~~

~~Section 7. Posthearing Procedure. (1) If the hearing has not been conducted by the board, the presiding officer shall prepare and submit to the board findings of fact, conclusions of law, and recommended order.~~

~~(2) A copy of the findings of fact, conclusions of law, and recommended order, or decision if the board has conducted the hearing, shall be mailed to all parties of record.~~

~~(3)(a) If the hearing was not conducted by the board, a party may file exceptions to the presiding officer's findings of fact, conclusions of law, and recommended order within fifteen (15) days of their submission to the board.~~

~~(b) If the hearing was conducted by the board, a party may not file exceptions to the board's findings of fact, conclusions of law, and order.~~

~~(4) The board may:~~

~~(a) Adopt the findings of fact, conclusions of law, and recommended order of the presiding officer;~~

~~(b) Prepare its own findings of fact, conclusions of law, and order;~~

~~(c) Remand for further action by the presiding officer; or~~

~~(d) Take any action it deems necessary to resolve the issues raised by the hearing.~~

~~(5) The decision of the board shall:~~

~~(a) Be in writing; and~~

~~(b) Contain a statement of its:~~

~~1. Findings of fact;~~

~~2. Conclusions of law; and~~

~~3. Order.~~]

JOHN G. BARKER, President

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of June, 1996, at 10 a.m. in Capitol, 700 Capitol Avenue, Room 141, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of June, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Grant, Assistant Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, Telephone: (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Grant

(1) Type and number of entities affected: Approximately 1850 licensed embalmers and funeral directors, approximately 500 licensed funeral establishments, approximately 200 apprentice embalmer and funeral directors, and approximately 60 to 80 applicants for embalmer and funeral director licenses 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is amended to comply with KRS Chapter 13B. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(10) Any additional information or comments: No additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because of uniform treatment under the law.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:111. Deer and turkey hunting on federal areas.

RELATES TO: KRS 150.025, 150.170, 150.175, 150.340, 150.360, 150.370, 150.390, 150.395, [~~150.411, 150.4111,~~] 150.990

STATUTORY AUTHORITY: KRS 150.015, 150.025, 150.170, 150.175, 150.390, 150.990

NECESSITY AND FUNCTION: To establish deer and turkey hunting seasons on federal areas. This amendment is necessary to establish consistent season frameworks for federal areas, to allow the taking of fallow deer at Land Between the Lakes, and to change tagging requirements at Reelfoot National Wildlife Refuge. [~~hunting dates for these areas, and to remove extraneous subject matter which the department does not regulate, to remove references to areas now included in 301 KAR 2:078, and to meet the formatting and language requirements of KRS Chapter 13A.~~]

Section 1. General Requirements. (1) Unless otherwise stipulated in this administrative regulation, the provisions of 301 KAR 2:172 and 301 KAR 2:140 apply.

(2) On the areas listed in this administrative regulation, hunters shall:

(a) Obtain [~~appropriate~~] permission to hunt, in the form of area permits, before hunting.

(b) Not hunt deer or turkey except on assigned hunting dates.

(c) Remain in assigned areas.

(d) Unless exempted by KRS 150.170[~~(3) through (8)~~], have in their possession the signature portion of a valid deer or turkey permit.

(e) Unless otherwise specified in this administrative regulation, tag deer with area tags issued on the area in lieu of the state deer tag.

(f) Keep the area tag attached to the deer until the carcass is processed.

(3) Hunters may obtain specific information about application procedures and deadlines, permit fees, or other hunting requirements from the appropriate federal agency.

Section 2. Land Between the Lakes (1) Deer archery, quota and youth quota hunts: antlered or antlerless white-tailed or fallow deer as specified on permit [~~any white-tailed deer~~] on assigned areas and dates between [~~the last Saturday in~~] September 15 and January 15.

(2) A [~~Quota hunt: one (1) white-tailed deer, antlered or antlerless as specified on permit, on assigned areas and dates between October 1 and January 15.~~

~~(3) Quota youth hunt: one (1) white-tailed deer, antlered or antlerless as specified on permit, on assigned areas and dates between October 1 and January 15.~~

~~(4)~~] person[~~s~~] shall not take more than:

(a) [~~In 1995:~~

~~1. Two (2) deer per season;~~

~~2. One (1) deer during quota hunts.~~

~~(b) In 1996 and subsequent years:~~

~~1.~~] Two (2) deer during archery hunts; and

(b) [~~2.~~] One (1) deer during quota hunts.

(3) [~~(5)~~] Turkey archery hunts: one (1) turkey of either sex during deer archery hunt.

(4) [~~(6)~~] Quota hunters shall:

(a) Apply in advance at Land Between the Lakes.

(b) check in prior to hunting.

(5) [~~(7)~~] Persons shall tag:

(a) Harvested turkeys with the appropriate state turkey tag.

(b) Harvested deer with either:

1. The appropriate state antlered or antlerless state deer tag; or

2. A wildlife management area tag issued by Land Between the Lakes.

(6) [~~(8)~~] Persons harvesting deer or turkey shall take the entire or field-dressed carcass to a Land Between the Lakes check station before leaving Land Between the Lakes.

(7) [~~(9)~~] Persons shall not hunt deer or turkey with crossbows.

Section 3. Fort Campbell. (1) Youth, gun or archery deer hunts: [~~any~~] deer as specified on permit on assigned areas and dates between September 15 and January 15.

(2) [~~Deer gun or archery hunts. Any deer on assigned areas and dates from September 1 through January 15.~~

~~(3)~~] Turkey, either sex:

(a) Deer archery hunters may take turkey.

(b) Firearm season: on assigned areas and dates between October 15 and December 31.

(c) Turkeys taken at Fort Campbell are bonus birds.

(3) [~~(4)~~] White turkey.

(a) Hunters may take one (1) white turkey of either sex during open Fort Campbell hunting seasons.

(b) Statewide and post limits and tagging requirements do not apply to white turkey.

Section 4. Fort Knox. [~~(1)~~] Deer gun or archery hunts: antlered or antlerless [~~any~~] deer as specified on permit on assigned areas and dates between September 15 [~~30~~] and January 15 [~~December 31~~].

[~~(2) Deer gun hunt: any deer on assigned areas and dates between November 1 and January 31.~~]

Section 5. Bluegrass Ordnance Depot Activity. [~~(1)~~] Deer gun or archery hunts: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 15. [~~during the month of October and November on assigned areas and dates.~~]

[~~(2) Deer gun hunts: during the month of November and December on assigned areas and dates.~~]

Section 6. Reelfoot National Wildlife Refuge. (1) Archery or quota hunts: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 15. [~~any deer first Saturday in November for two (2) consecutive days.~~]

(2) [~~Archery hunt: any deer, the first Monday in October for fourteen (14) consecutive days.~~

~~(3)~~] Bag limits. The refuge bag limit is four (4) deer. No more than two (2) deer shall be taken by gun.

(3) Tagging deer.

(a) Quota hunters shall tag deer with a tag issued by Reelfoot

National Wildlife Refuge.

(b) Archery hunters shall tag deer with the appropriate state tag.

(4) ~~[Gun deer hunters shall check in at designated refuge check stations.~~

~~(5)~~] Deer hunters shall check harvested deer at the nearest open state check station.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 1, 1996

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 28, 1996 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: There are an estimated 211,000 deer hunters and 20,000 turkey hunters in Kentucky. An unknown portion of these hunters will hunt on the federal areas covered in this regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This amendment continues long-standing hunting seasons on federal areas and will have no impact on costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This amendment continues long-standing hunting seasons on federal areas and will have no impact on costs of doing business.

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

1. First year following implementation: No additional compliance, reporting or paperwork requirements; hunters, as in years past, will be required to check deer taken.

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: The amendments to this administrative regulation will create no costs or savings to the department.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Check station results will be tabulated and analyzed.

(4) Assessment of anticipated effect on state and local revenues: The continuation of established hunting seasons on federal areas will have no effect or state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation establishes permissible hunting dates on federal areas. Implementation and enforcement is the responsibility of each installation using their federal sources of revenue.

(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: No public comments received. The continuation of established hunting seasons should have no impact on economic activities.

(b) Kentucky: No public comments received. The continuation of established hunting seasons should have no impact on economic activities.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternatives are (1) to permit hunting on federal areas only within statewide season dates and limits, or (2) not to permit hunting on these areas at all. Alternative (1) was rejected because other priorities on the areas, particularly on military installations, often preclude hunting during statewide seasons. Alternative (2) was rejected because to close these areas would deprive Kentuckians of recreational opportunities and could lead to deer overpopulation and habitat destruction.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Health benefits will result from outdoor recreational exercise by those who participate in hunting on these areas. Wildlife management afforded by regulated hunting will help maintain deer populations at levels that will prevent the environmental damage associated with overpopulation.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Slight

(c) If detrimental effect would result, explain detrimental effect: Lack of outdoor recreational opportunity; potential for habitat destruction caused by deer overpopulation.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was used to the extent that each area is afforded differing season dates and other hunting requirements tailored to the specific needs of the area. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection " and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 CFR 81, November 6, 1991 Federal Register (56 FR 56694), 42 USC 7401-7626, 7407, 7501-7515, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7401-7626

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 designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Definitions. (1) "Rest of state" as used in Sections 3 through 8 of this administrative regulation means the remainder of the state has been designated and identified on a county by county basis.

(2) "Statewide" as used in Sections 3 through 8 of this administrative regulation means the entire state has been designated on a county by county basis.

(3) "Road" as used in Section 2(3) of this administrative regulation means a Kentucky route, a county road, a lane, a road, or a U.S. route, highway, or interstate.

Section 2. Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for sulfur dioxide, carbon monoxide, ozone and nitrogen oxides is listed in Sections 4 through 7 of this administrative regulation. The attainment status of areas of the Commonwealth of Kentucky with respect to total suspended particulates is listed in Section 4 of this administrative regulation.

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to 42 USC 7407(d)(1).

(3) A road, junction, or intersection of two (2) or more roads as used in Section 7 of this administrative regulation that defines a nonattainment boundary for an area which is a portion of a county designated as nonattainment for ozone for any classification except marginal shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection.

Section 3. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section 4. Attainment Status Designations for Total Suspended Particulates.

Designated Areas	Does Not Meet Primary Standard	Does Not Meet Secondary Standards	Better Than Standard	Cannot Be Classified
Bell Co.			X	
Boyd Co.				X
That portion of Bullitt County in Shepherdsville			X	
That portion of Campbell County in Newport			X	
That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south and by the Beltline (KY 212) projected to the river on the east				X
That portion of Henderson County in Henderson				X
Jefferson County				X
That portion of Lawrence County in Louisa				X
McCracken County			X	
Marshall County			X	
That portion of Madison County in Richmond				X
Muhlenberg County			X	
That portion of Perry County in Hazard				X
That portion of Pike County in Pikeville				X
That portion of Whitley County in Corbin			X	
Rest of State			X	

Section 5. Attainment Status Designations for Sulfur Dioxide.

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
That portion of Boyd County south of the Northern UTM line 4251 Km	X	X	
Muhlenberg County		X	
Rest of State			X

Section 6. Attainment Status Designations for Carbon Monoxide.

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified Or Better Than Standards
Jefferson Co.		X

Rest of State			X

Section 7. Attainment Status Designations for Ozone.

Designated Area	Moderate	Marginal	Cannot be Classified or Better Than Standards
Boone County	X		
Boyd County	[~~X~~]		X
That portion of Bullitt County within the boundaries described as follows: beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox military reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with KY 2723, proceeding north on KY 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of Ky 1020; proceeding north on Ky 1020 to the beginning.	X		
Caldwell County			X
Calloway County			X
Campbell County	X		
Christian County		X	
Fayette County			X
That portion of Greenup County within the boundaries described as follows: Beginning at a point where the Ohio River meets the Greenup-Boyd County Line; proceeding southwest along the Greenup-Boyd County Line to the junction of the East Fork of the Little Sandy River and the Greenup-Boyd County Line; pro-			

ceeding north and west along the East Fork of the Little Sandy River to the confluence of the Little Sandy River; proceeding north along the Little Sandy River to the confluence of the Ohio River; proceeding east along the Ohio River to the beginning.	[~~X~~]	X	~~Road)~~] and the access road [~~County Road 746~~]; proceeding to follow an electric power line east-northeast across from the junction of County Road 746 and Dawkins Lane to the east-northeast across KY 53 on to the LaGrange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on KY 146; proceeding along the power line south across KY 146 and the Seaboard System Railroad Track to adjoin the incorporated city limits of LaGrange; then proceeding east then south along the LaGrange city limits to a point abutting the north side of KY 712; proceeding east-southeast on KY 712 to the junction of Massie School Road and KY 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northwest on Zale Smith Road to the junction of KY 53 and Zale Smith Road; [~~and then north-northwest on Massie School Road to the junction of KY 53 and Massie School Road;~~] proceeding on KY 53 to the north-northwest to the junction of new Moody Lane and KY 53; proceeding on new Moody Lane to the
Jefferson County	X		
Kenton County	X		
That portion of Oldham County within the boundaries described as follows: Beginning at the intersection of the Oldham-Jefferson County line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of KY 329 and the southbound lane of Interstate 71; proceeding to the northwest on KY 329 to the intersection of Zaring Road and KY 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of KY 393 and Cedar Point Road; proceeding to the south-southeast on KY 393 to the junction of [~~County Road 746 (~~]the access road on the north side of Reformatory Lake and the Reformatory[~~)~~]; proceeding to the east-northeast on the access road [~~County Road 746~~] to the junction with Dawkins Lane [~~(also known as Saddlers Mill~~			

south-southwest until meeting the city limits of LaGrange; then briefly proceeding north following the LaGrange city limits to the intersection of the northbound lane of Interstate 71 and the LaGrange city limits; proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning.	X	
Trigg County		X
Rest of State		X

Section 8. Attainment Status Designations for Nitrogen Oxides.

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: May 14, 1996

FILED WITH LRC: May 15, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on the amendment will be conducted on June 28, 1996, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation is being amended to make the boundaries and classifications of nonattainment areas for ozone compatible with those promulgated and discussed by the U.S. EPA in the Federal Register on June 29, 1995 (60 FR 33748) and on September 20, 1995 (60 FR 48653). The June 29, 1995 Federal Register redesignates the Kentucky portion of the Ashland-Huntington nonattainment area from nonattainment to attainment for ozone based upon the meeting of five requirements of section 107(d)(3)(E) of the Clean Air Act. These requirements include quality assured ambient air quality monitoring data which demonstrate attainment and an approved maintenance plan. The Kentucky portion of the moderate ozone nonattainment area consists of Boyd County and a portion of Greenup County. The September 20, 1995 Federal Register corrects the boundary of the Kentucky portion of the Louisville moderate ozone nonattainment area. The Kentucky portion includes portions of Bullitt and Oldham Counties. National boundaries, roads, powerlines, etc, were used to detail the nonattainment area. When these boundaries were developed, sources on one side of the street or intersection were included in the nonattainment area while sources on the other side inadvertently were not. As a result, not all sources contributing to the violation of the ozone National Ambient Air Quality Standards in Louisville were included in the nonattainment area, and inequitable economic impacts have been placed upon small competing businesses. This has affected the well being of some small businesses and it has undermined the effectiveness of the plan to attain the standard in the Louisville nonattainment area. The impact of this regulation is indirect. This regulation designates the attainment status of a county. The applicability of other regulations refers to this attainment status. Although the impact of this regulation is indirect, an estimate of the number and types of sources is presented. For entities located in Boyd County and the previously nonattainment portion of Greenup County, this means that new control requirements specifically for moderate ozone nonattainment areas will not apply. For the Bullitt and Oldham boundary corrections, all applicable requirements and emission reductions that applied within the old boundaries now apply to entities within the corrected boundaries. The Division estimates that 3 entities are affected. These entities are gasoline service stations.

(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. Please see (1) above. No costs or savings are directly generated by this regulation. However, an entity may be required to meet standards set in another regulation because of the status designation in this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above. Some sources in nonattainment areas may be subject to regulation, while similar sources in attainment areas are not. This amendment implements no costs or savings beyond those described in the final federal rulemaking.

(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 rulemaking. Some sources in nonattainment areas may be subject to regulation, while similar sources in attainment areas are not.

(b) Kentucky: Please see (6)(a) above.

(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 rulemaking.

(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. The federal government could enforce the federal rulemaking.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, 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 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 makes the state's nonattainment areas for ozone compatible with those promulgated by the U.S. EPA.

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 federal requirements that the attainment status for ozone be revised appear in the Federal Register, 60 FR 33752, June 29, 1995, and in the Federal Register, 60 FR 48654, September 20, 1995.

2. State compliance standards. There are no compliance standards. This federal rule establishes attainment status.

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 mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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 May 14 [~~April 12~~], 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
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 (Amended 5/14/96)
27-12-01 Supervision: Case Classification
27-12-02 Risk 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: May 14, 1996

FILED WITH LRC: May 14, 1996 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for June 24, 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.

JUSTICE CABINET
Department of Corrections
(Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. (1)(a) Northpoint Training Center policies and procedures, May 13 [~~March 13~~], 1996, are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Corrections Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer

NTC 01-17-01 Relationships with Public, Media and Other Agencies
NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
NTC 02-03-01 Accounting for Appropriations and Expenditures of Funds
NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen (Amended 5/13/96)
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Accounts (Amended 5/13/96)
NTC 04-01-01 Training and Staff Development
NTC 04-04-01 Firearms and Chemical Agents Training
NTC 06-01-01 Offender Records
NTC 06-01-02 Records - Release of Information (Amended 5/13/96)
NTC 06-01-03 Taking Offender Record Folders onto the Yard
NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use [(~~Amended 3/13/96~~)]
NTC 08-07-01 Safety Standards [(~~Amended 3/13/96~~)]
NTC 10-01-01 Special Management Unit
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
[~~NTC 11-04-01 Food Service: Meals~~] (Deleted 5/13/96)
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards and Regulations for Food Service Employees
NTC 11-06-01 Inspection and Sanitation
NTC 11-07-01 Purchasing and Storage of Food Products
NTC 12-01-01 Institutional Inspection [(~~Amended 3/13/96~~)]
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens [(~~Amended 3/13/96~~)]
NTC 12-02-02 Issuance of Personal Hygiene Products [(~~Amended 3/13/96~~)]
NTC 12-07-01 Grooming and Hair Care Standards [(~~Added 3/13/96~~)]
NTC 13-01-01 Emergency Medical Care Plan [(~~Amended 3/13/96~~)]
NTC 13-01-02 Emergency and Specialized Health Services [(~~Amended 3/13/96~~)]
NTC 13-02-01 Administration and Authority for Health Services [(~~Amended 3/13/96~~)]
NTC 13-03-01 Sick Call and Pill Call (Amended 5/13/96)
NTC 13-04-01 Utilization of Pharmaceutical Products (Amended 5/13/96)
NTC 13-05-01 Dental Services (Amended 5/13/96)
NTC 13-05-03 Dental Radiation Levels (Amended 5/13/96)
NTC 13-05-04 Attest Steam Incubator (Amended 5/13/96)
NTC 13-06-01 Licensure and Training Standards (Amended 5/13/96)
NTC 13-07-01 Provisions for Health Care Delivery (Amended 5/13/96)
NTC 13-08-01 Medical and Dental Records (Amended 5/13/96)
NTC 13-09-01 Special Diets (Amended 5/13/96)
NTC 13-11-01 Inmate Health Screening and Evaluation (Amended 5/13/96)
NTC 13-12-01 Special Health Care Programs (Amended 5/13/96)
NTC 13-17-01 Inmates Assigned to Health Services (Amended 5/13/96)
NTC 13-19-01 Mental Health Care Program (Amended 5/13/96)
NTC 13-19-03 Suicide Prevention and Intervention Program (Amended 5/13/96)
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste (Amended 5/13/96)
NTC 13-21-01 Vision Care and Optometry Services (Amended 5/13/96)
NTC 13-22-01 Informed Consent (Amended 5/13/96)
NTC 13-23-01 Special Needs Inmates (Amended 5/13/96)
NTC 14-01-01 Legal Services Program (Amended 5/13/96)
NTC 14-01-02 Receiving, Viewing, Handling and Storage of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities (Amended 5/13/96)
NTC 14-03-02 Board of Claims (Amended 5/13/96)
NTC 15-01-01 Restoration of Forfeited Good Time (Amended 5/13/96)
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments (Amended 5/13/96)
NTC 15-02-03 Hearing Officer (Amended 5/13/96)
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for General Population Dormitories
NTC 15-04-01 Inmate Identification (Amended 5/13/96)
NTC 16-01-01 Mail Regulations
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm and Outside Detail Dorm Visiting
NTC 16-02-04 Controlled Visitation
NTC 16-03-01 Inmate Furloughs (Amended 5/13/96)
NTC 16-05-01 Telephone Use and Control (Amended 5/13/96)
NTC 17-01-01 Personal Property Control (Amended 5/13/96)
NTC 17-01-02 Authorized Inmate Personal Property (Amended 5/13/96)
NTC 17-01-03 Unauthorized Inmate Property (Amended 5/13/96)
NTC 17-01-04 Disposition of Unauthorized Property (Amended 5/13/96)
NTC 17-01-05 State Issue and Required Inmate Clothing
NTC 17-03-01 Assessment and Orientation [(~~Amended 3/13/96~~)]
NTC 18-01-01 Preparole Progress Report (Amended 5/13/96)
NTC 18-02-01 Classification (Amended 5/13/96)
NTC 18-02-02 Classification - 48 Hour Notification (Amended 5/13/96)
NTC 18-03-01 Special Notice Form (Amended 5/13/96)
NTC 18-05-01 Transfers of Inmates (Amended 5/13/96)
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (Amended 5/13/96)
NTC 19-01-01 Inmate Work Program
NTC 19-01-03 Temporary Leave from Job Assignment
NTC 19-02-01 Correctional Industries (Amended 5/13/96)
NTC 19-02-02 Guidelines for Correctional Industries (Amended 5/13/96)
NTC 20-01-01 Educational Programs (Amended 5/13/96)
NTC 20-02-02 Live Work Projects in Vocational School Classes [(~~Amended 3/13/96~~)]
NTC 21-01-01 Library Services [(~~Amended 3/13/96~~)]
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01 Religious Services
NTC 23-03-01 Marriage of Inmates
NTC 24-04-01 Honor Status
NTC 24-05-01 Unit Management
NTC 25-01-01 Release Preparation Program
NTC 25-01-02 Temporary Release/Community Center Release
NTC 25-01-03 Graduated Release
NTC 25-02-01 Funeral Trips and Bedside Visits
NTC 25-03-01 Inmate Release Procedure
NTC 26-01-01 Citizen Involvement and Volunteer Services Program

DOUG SAPP, Commissioner
APPROVED BY AGENCY: May 13, 1996
FILED WITH LRC: May 14, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for June 24, 1996, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 269 employees of the correctional institutions, 929 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.

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

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

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) contracting business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors. This amendment is necessary to reduce the passing grade on the master examination because the board found that seventy-five (75) percent was excessively restrictive. [~~This amendment is necessary to delete language regarding the "grandfather clause" and update the application form to the current date.~~]

Section 1. Definitions. (1) "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and is authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems. If the individual is representing a company, the license issued in the name of the individual shall also name the company.

(2) "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and is authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master.

(3) "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent judgment regarding activities of others acting under his direction.

Section 2. General Requirements. (1) Mandatory licensure. Any person, other than one exempted by KRS 198B.674, who is engaged in the business of HVAC contracting shall comply with applicable administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Beginning July 1, 1996, each licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) Supervision. The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee. The master shall assign each apprentice to the oversight of one (1) or more journeyman. The master shall not personally engage in actual installation, maintenance, alteration or remodeling or repair unless the master also possesses a journeyman license.

(4) Company license. A licensee who is an employee of a company whom the licensee is representing shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 7(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a master HVAC contractor license shall meet all of the following application requirements:

(a) The applicant shall submit the Master HVAC Contractor License Application Form HVAC 1, September, 1995, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing,

Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application form shall be accompanied by a nonrefundable initial license application fee of $100; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience as a contractor in the business of installation, alteration, maintenance and performance of repairs and alteration of HVAC systems, as required by Section 5 of this administrative regulation; and

(f) The applicant shall supply a certificate of insurance showing general liability insurance in the minimum amount of $500,000, including at least $300,000 for property damage. The named insurance carrier shall be a company which holds a certificate of authority from the Kentucky Department of Insurance; and

(g) If the applicant is an employee representing a company, the company name shall be stated on the application form. The company may provide the insurance certificates required by paragraph (f) of this subsection and shall be subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. Each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of all types of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the test known as "Kentucky Master Heating, Ventilation and Air Conditioning Contractor Examination" with a passing grade of seventy (70) [~~seventy-five (75)~~] percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, or other testing agency approved by the board.

(5) The examination fee shall be fifty (50) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section.

(1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience in the HVAC business obtained after July 1, 1995, shall be for HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.

(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 6. Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, application for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year to be returned, together with the required fee.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) Licenses which have been placed in inactive status are exempt from annual renewal. They shall be reactivated upon payment of a renewal fee for the year reactivated, the reactivation fee and compliance with continuing education requirements for each year of inactive status.

(6) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if any of the following occur:

(a) The applicant fails to pay the fees required for renewal, reactivation and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board; or

(c) The applicant fails to provide the current insurance certificate.

Section 7. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until such time as the licensee requests reactivation.

(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 6(5) of this administrative regulation.

(4) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 2(4) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 8. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 30, 1996

FILED WITH LRC: May 13, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 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 June 20, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: All new applicants for licensure.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment does not affect the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings as a result of this amendment.

2. Continuing costs or savings: No costs or savings as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Regular processes used.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Renewal license fee of $50 each for 3500 HVAC contractors.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: All test applicants need same passing score.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Licensing HVAC contractors will improve the safety and health of the public throughout the state by establishing minimum requirements for engaging in the HVAC business. A lower score will assure competency without being too stringent.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect if amendment 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: None

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering applied in sense that some applicants may be able to utilize equivalent credentials or tests.

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

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

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY AND FUNCTION: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics. This amendment is necessary to delete continuing education requirements and to include the teaching experience of an HVAC teacher as equal to one (1) year work experience. This amendment is in compliance with HB 189 of the 1996 General Assembly. [~~This amendment is necessary to delete language regarding the "grandfather clause" and update the application form to the current date.~~]

Section 1. Definitions. (1) "HVAC" means heating, ventilation and air conditioning, hydronic and burner service systems as defined in KRS 198B.650(1), (2), (8), (9) and (15).

(2) "Master HVAC contractor" or "master" as defined by KRS 198B.650(12) and is authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems.

(3) "Journeyman HVAC mechanic" or "journeyman" as defined by KRS 198B.650(10) and is authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master HVAC contractor.

Section 2. General Requirements. (1) Mandatory licensure. Effective July 1, 1995, any person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.

(2) [~~Continuing education. Beginning July 1, 1996, each journeyman licensee shall complete ten (10) hours of continuing education, approved by the board, prior to renewal of the license for the next year.~~

~~(3)~~] The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. Each applicant seeking a journeyman license shall meet all of the following application requirements:

(a) The applicant shall submit the journeyman HVAC Mechanic Application Form HVAC 2, September, 1995, hereby incorporated by

reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(b) The completed application shall be accompanied by a nonrefundable initial license application fee of fifty (50) dollars; and

(c) The applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) The applicant shall be an individual; and

(e) The applicant shall have and shall verify to the board the applicant's experience in the installation, alteration, maintenance and performance of repairs on and alteration of HVAC systems, as required by Section 5 of this administrative regulation; and

(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. Each applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) The applicant shall successfully complete the test known as "Kentucky Journeyman Heating, Ventilation and Air Conditioning Mechanic Examination" with a passing score of seventy (70) percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, the National Assessment Institute, 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) An applicant shall not retake an examination less than sixty (60) days from the date of his last examination.

(8) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. All applicants shall meet the experience requirements of this section. (1) Minimum experience. Each applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another Kentucky HVAC contractor.

(c) Credit for completion of one (1) year of teaching experience in a board or state approved HVAC technical education program shall be considered equivalent to one (1) year employment.

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

Section 6. Renewal Requirements and Procedures. (1) Applications for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of twenty-five (25) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) The application for renewal of a licensed journeyman HVAC mechanic shall be denied if [~~any of the following occur:~~

~~(a)~~] the applicant fails to pay the fees required for renewal and restoration, if applicable[~~; or~~

~~(b) The applicant fails to comply with the continuing education requirements of the board~~].

Section 7. Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 6(3) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 8. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: April 30, 1996
FILED WITH LRC: May 13, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 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 June 20, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: All new applicants for licensure.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment does not affect the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings as a result of this amendment.

2. Continuing costs or savings: No costs or savings as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Regular processes used.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fees of journeyman mechanics.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: Statewide

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Licensing journeyman mechanics will improve the safety and health of the public throughout the state by establishing minimum requirements for employment as an HVAC mechanic. Continuing education is not feasible at this time.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect 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: 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? No. All applicants who have vocational education training may use it and no mechanics are required to have continuing education credits at this time.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 13A.120, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation. This administrative regulation is being amended to address the flooding of new buildings by combination sanitary/storm sewers and eliminate flood damage by overflowing combined sewers (Section 12 of this administrative regulation), and to reduce inconvenience during pump service and repair during electrical outages (Section 18 of this administrative regulation). [~~allow the use of another type of pipe that is designed for storm water drainage (Section 8 of this administrative regulation).~~]

Section 1. Independent System. The drainage and plumbing system of new building and of new work installed in an existing building shall be separate and independent of other buildings except as outlined in this administrative regulation. A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. Excavations made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) If possible, the sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2) House sewers shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot. Sewers shall have at least an eighteen (18) inch cover. Sewer piping installed under property subject to vehicular traffic (e.g., driveways, parking lots and similar locations shall have at least a three (3) foot cover unless constructed of cast iron piping. If less than a three (3) foot cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on all sides and the top. Sewers shall be backfilled by hand and tamped six (6) inches above the piping, or filled with six (6) inches grillage above the piping. All joints in cast iron and vitrified clay pipe shall be made in conformance with the State Plumbing Code.

Section 6. New House Sewer Connections. House sewers installed where a private sewerage system has been discarded may connect to the house drain, if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. House sewers or combined sewers, beginning two (2) feet outside the foundation wall of a building, shall be made of either extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC produced and labeled as ASTM F-891, cellular core ABS produced and labeled as ASTM 628, truss pipe and extra heavy SDR 35 pipe and Type PS-46, Poly(Vinyl Chloride) (PVC) in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F 789-82

or PVC ribbed pipe produced and labeled as ASTM 795.

Section 8. Material for Storm Sewers Inside Buildings. Material for storm sewers inside of buildings to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be cast iron pipe, aluminum or Schedule 40 ABS or PVC DWV pipe. Storm sewers in sizes of ten (10) inches and larger shall be either cast iron, aluminum, Schedule 40 ABS or PVC DWV pipe, SDR 35, vitrified clay or concrete conforming to appropriate commercial specifications with approved joints.

Section 9. Change of Direction. Change in direction of a sewer shall be made with long curves, one-eighth (1/8) bends or Y's.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. House sewers receiving branches shall be sized in the same manner as house drains (see 815 KAR 20:090).

Section 11. Size of Storm Systems. The required sizes of storm sewers shall be determined on the basis of the total drained areas in horizontal projection in accordance with the following table. A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

Number of fixture units on sanitary system

Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

Number of fixture units on sanitary system

Drained roof area in square feet	325 to 486	487 to 732	733 to 1,098	1,099 to 1,644	1,645 to 2,466	2,467 to 3,702	3,703 to 5,556	Over 5,556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 to 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 to 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 to 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 to 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 to 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 to 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 to 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 to 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 to 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 to 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 to 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

(2) For buildings constructed after the effective date of this administrative regulation, all plumbing fixtures and openings connecting to a combination sanitary/storm sewer system shall either be installed above the elevation of the cover of the nearest manhole serving the main or they shall discharge through a sewage ejector to the combined sewer system at an elevation high enough to prevent flooding the building.

Section 13. House Sewer in Undisturbed or Filled Ground. House sewers laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage. House sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock. House sewers constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. Storm sewers laid in undisturbed ground shall not require grillage. Storm sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In public buildings in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste

shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In homes where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump pit shall be provided with a tight-fitting concrete cover. On the outside of the building this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. All subsoil drains shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or any equally efficient method. The sumps shall automatically discharge.

Section 18. Ejectors, Vented. Sewage ejectors serving residential installations shall be vented with a two (2) inch vent. Ejectors serving commercial or industrial installations shall be vented with a three (3) inch vent except when a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be revented with a two (2) inch vent back to the three (3) inch vent stack. In no instance shall the ejector vent be smaller than that recommended by the manufacturer of the pump. Any portion of the building drainage system that is above the cover of the manhole serving the main that can flow by gravity to a sewer shall be installed for gravity flow to the combined/sanitary sewer, except for systems designed otherwise by a licensed professional engineer.

Section 19. Ejector Power: Motors, Compressors, Etc. Motors, air compressors and air tanks shall be located where they are open for inspection and repair at all times. The air tanks shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating. The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. If subsoil catch basins are installed below the sewer level, an approved automatic ejectors shall be used. The ejector or any device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas and Roofs. (1) Roofs, paved areas, courts, and courtyards shall be drained into one (1) of the following:

(a) A storm water system;

(b) A combined sewerage system;

(c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) These areas shall not be drained into sewers intended for sewage only.

(3) Traps.

(a) If drains are connected to a combined sewerage system, they shall be trapped.

(b) If roof leaders, conductors, or gutter openings are located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) Traps shall be set below the frost line or on the inside of the building.

(d) If the drains are not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. If conductors and roof leaders are placed within the walls of a building, or in an interior court or ventilating pipe shaft, they shall be constructed of cast iron pipe, galvanized wrought iron, galvanized steel, copper, aluminum, schedule 40 ABS/PVC DMV pipe or reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red and silver thread). The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. If outside sheet metal conductors or downspouts are connected to a house drain, they shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line. Where the downspouts run along public driveways without sidewalks, they shall be placed in niches in the walls, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one which conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. A conductor pipe shall not be used as a soil, waste or vent pipe. A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. Overflow pipes from cisterns, supply tanks, expansion tanks, or drip pans shall connect only indirectly with any house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. Subsoil drains shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

Section 29. Approvals of New Sewer Connections to Existing Buildings. In areas where the local health department or sanitary sewage system board, plant, district or treatment plant owner prohibits the discharge of basement floor drains or other apparatus into the sanitary sewer system, existing basement floor drains and sump pump apparatuses shall comply with the new construction requirements of this code and be inspected prior to the approval of connections for a new sewer line.

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: May 1, 1996
FILED WITH LRC: May 13, 1996 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 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 June 20, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden
(1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No effect on cost of living or employment with the implementation of this amendment.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business with the implementation of this 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: No reporting or paperwork required by users of the State Plumbing Code.
2. Second and subsequent years:
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.
(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Division of Plumbing's revenue will not be affected by the enforcement of this amendment.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.
(b) Kentucky: Same as above.
(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To help eliminate flood damage to property owners by overflowing combined sewers.
(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment will result if not implemented.
(c) If detrimental effect would result, explain detrimental effect:
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict: No known conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(10) Any additional information or comments:
(11) TIERING: Is tiering applied? Yes. This amendment applies only to plumbing in new buildings.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Amendment)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135
STATUTORY AUTHORITY: KRS 224.60-135, 227.300
NECESSITY AND FUNCTION: KRS 224.60-135 requires the State Fire Marshal to promulgate administrative regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. 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 and to determine financial capability through proof of insurance. This amendment is necessary to clarify that a certified contractor is to be present on site for the installation of piping as well as at the time of final inspection. [~~This amendment is necessary to clarify the type of insurance and coverage included and create a probationary certificate when the applicant does not comply with the level of experience required.~~]

Section 1. Definitions. (1) "Certified contractor" means any individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this administrative regulation to engage in the business of removal and closure, only, but the certification shall be limited to closure and removal, only.
(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.
(3) "Repair" means the restoration of a tank or an underground storage tank or any of its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" shall not include routine maintenance or cathodic protection applied to existing installations.
(4) "Remove or removal" means permanently taking an underground storage tank or any of its components out of service by

removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(6) "Underground storage tank" means as defined by KRS 224.810.

(7) "UPST system" means an underground storage tank defined by KRS 224.810 and used solely for the storage of petroleum and petroleum products.

Section 2. Effective April 1, 1991. (1) A permit for the installation of any UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit is a certified contractor, and the applicant assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair or close any UPST system unless the installation, removal, repair or closure is made by a certified contractor and unless the installation, removal, repair or closure of the system complies with applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A company may be the certified contractor and may engage in the activities regulated by this administrative regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this administrative regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of any anchoring devices, backfilling to the level of the UPST system and strapping, if any;

(c) Installing piping and any of its components or field coating and cathodically protecting any piping and its components; [~~Final inspection of an installation after components of the piping have been connected, field coated and cathodically protected;~~]

(d) Final inspection and pressure testing of any component of the tank or piping components of the UPST system;

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) Any time during the repair project in which components of the piping are connected;

(d) Any time during the repair project in which the UPST or its associated piping is pressure tested;

(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices;

(f) The addition of leak detection devices or spill and overfill devices.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the closing in which components of the UPST system are disconnected or capped.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or any of its components;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the removal in which components of the UPST system are disconnected or capped.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall meet all of the following application requirements:

(1) The applicant shall submit an application to the State Fire Marshal, on the form furnished by the State Fire Marshal and outlined in Section 11 of this administrative regulation, accompanied by a nonrefundable fee of $150; and

(2) The applicant shall be an individual, and shall be at least eighteen (18) years of age; and

(3) The individual shall verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site, closure and removal of UPST systems, as required by Section 6 of this administrative regulation; and

(4) The individual shall complete the examination requirements of Section 7 of this administrative regulation; and

(5) Upon application or prior to the issuance of the certificate, the individual shall provide proof of financial capability for taking corrective action and for compensating third parties for bodily injury and property damage by submitting certificates of general liability insurance in the minimum amount of $500,000 and pollution liability insurance in the minimum amount of $25,000 per occurrence; and

(6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, that he has participated in the installation of, performance of repairs on site to, closure of, or removal of a minimum of six (6) underground storage tanks. Of the participations, a minimum of three (3) shall have involved the installation of UPST tanks; or

(2) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements by one-third (1/3).

(3) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(4) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6(1) of this administrative regulation, the applicant may receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85)

percent on the written examination; and

(2) An applicant shall complete three (3) tank installations within one (1) year of the issuance of the certificate; and

(3) All UPST activities shall comply with applicable codes and statutes; and

(4) An applicant shall not remove, close, backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a $100 add-on inspection fee for each site where a tank is removed, closed or installed.

Section 8. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal only.

(4) An applicant may request permission to take the examination orally, upon good cause shown.

(5) An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(6) An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(7) Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(8) All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(9) With the application, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. Certification and Renewal Procedures. (1) Effective April 1, 1991, the State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7 of this administrative regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if any of the following occurs:

(a) The applicant fails to provide the information required by the application form prescribed by the State Fire Marshal and outlined in Section 11 of this administrative regulation; or

(b) The applicant fails to provide the insurance certificates or the fee required for application and examination; or

(c) The applicant fails to comply with the experience and education requirements of this administrative regulation; or

(d) The applicant does not successfully pass the examination required by this administrative regulation; or

(e) The applicant makes a misrepresentation or submits false statements with the application.

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the State Fire Marshal for any of the following reasons:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required code relating to installation, repair, closure or removal; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, close, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:040); or

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance, is no longer employed by the company in whose name the certificate was issued.

Section 11. Application Form for Certification of Underground Petroleum Storage Tank Contractors.

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: ____Full ____Remover
Application Fee: $150
Examination: $25 ___Yes ___No
(Remit by check or money order only. Payable to: Kentucky State Treasurer)

FOR OFFICE USE ONLY
Rec'd (Date) _____
Money Rec'd _____
Application # _____
Certification # _____

PLEASE PRINT OR TYPE AND SIGN

1. Full Name of Qualifying Person _____
2. Permanent Residence _____
   Street/Box Office Number
   _____
   City County State Zip
3. Telephone: _____
   Residence Business
4. Birthdate _____ 5. Social Security # _____
6. Place of Birth _____
   City County State
7. Company Name _____
   Company Address _____
   Street/Box Office Number
   _____
   City County State Zip
8. Certificate to be issued in:
   _____ Company Name _____ Individual Name
9. Send Mail to: _____
   Company Address/#7
   _____
   Permanent Residence/#2
10. List any schools or training seminars concerning tank installations which you have attended:

Title	Presented By	Date(s)

11. With whom did you most recently apprentice as a tank installer?
    Business name: _____
    Address: _____
    Street City State Zip

Person who supervised you: _____
Period of apprenticeship:
From _____ To_____
Month Yr Month Yr

12A. Number of years experience as a tank installer: _____
12B. Number of years experience as a tank remover: _____
13. Approximate # of tank installations you have:

	Supervised?	Participated in?
Bare/asphalt coated steel	_____	_____
Fiberglass	_____	_____
Fiberglass coated steel	_____	_____
Cathodically protected steel (STI-P3)	_____	_____
Dual containment (excavation liner)	_____	_____
Dual containment (double wall tank)	_____	_____
TOTALS	_____	_____

14A. Approximate number of piping installations you have:

	Supervised?	Participated in?
Black iron/galvanized	_____	_____
Copper	_____	_____
Fiberglass	_____	_____
Cathodically protected steel	_____	_____
Dual wall	_____	_____
TOTALS	_____	_____

14B. Approximate number of tank removals you have:
Supervised _____ Participated in _____

15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover.

Name	Address	Telephone #
1.		
2.		
3.		

16. Attach proof of general liability insurance. (Certificate of Insurance from a company authorized to do business in Kentucky)
17. Attach proof of pollution liability insurance. Certificate of insurance from an authorized insurer countersigned by a licensed Kentucky agent or from an eligible surplus lines insurer obtained through a Kentucky surplus lines broker; surety bond from a Kentucky authorized company or an irrevocable letter of credit from an FDIC Kentucky Domicile Bank)
18. Attach experience, listing of jobs (i.e., name of project, company name, dates, city, county, state, size and number of tanks, etc.) for qualifying individual.

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

_____
Signature of Applicant for Company

_____
Date

NOTARIZED BY:
State of _____
County of _____
Subscribed and sworn to before me this _____day of _____, 19____

_____
Notary Public

My Commission expires _____

DAVE MANLEY, State Fire Marshal
LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: May 1, 1996
FILED WITH LRC: May 13, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 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 June 20, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: All companies engaged in the business of installing, repairing, closing or removing underground petroleum storage tanks.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

(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:

(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: Application and verification of experience and insurance supplied upon application and renewal.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on local revenue and any increases on state revenue, if any, would be offset by costs of program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Costs of administering program are intended to be maintained by the fees charged.

(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: Experience is necessary in addition to testing to show knowledge of standards and technical expertise.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky:

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no known conflict or duplication of these regulations although some overlapping of laws in KRS Chapter 224 where owners and operators of service stations must be insured.

(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. Different levels of regulation and oversight are provided for based upon different levels of experience of the installers.

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

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS Chapter 227

STATUTORY AUTHORITY: KRS 13A.100, 227.489

NECESSITY AND FUNCTION: 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. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector. [~~This amendment is necessary to encourage inspectors to pass the national examination sooner (see Section 4 of this administrative regulation).~~]

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" as used in the National Electrical Code means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means any person who has met the criteria established by the commissioner, satisfactorily passed the examination as required by this administrative regulation, and received a certificate attesting thereto. The categories are:

(a) One (1) and two (2) family - persons who have passed the NCPCCI examination and persons classified as residential inspectors on the effective date of this administrative regulation. These inspectors shall be deemed qualified to perform electrical inspections and approve electrical installations related to one (1) and two (2) family dwellings and mobile homes only.

(b) General - persons who have passed the NCPCCI examination of the same name and persons classified as commercial inspectors on the effective date of this administrative regulation. These inspectors shall be deemed qualified to inspect and approve all types of residential, commercial, industrial and other properties which require electrical inspection.

(4) "Code" means the National Electrical Code (NEC) and any amendments adopted by the department.

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" means the Department of Housing, Buildings and Construction.

(7) "Electrical" means the installation of wires and conduits for the purpose of transmitting electricity and the installation of related fixtures and equipment.

(8) "Electrical industry" means those engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means one who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the department which is valid for a limited period of time. The department shall issue temporary certification to qualified persons under the conditions of Section 4 of this administrative regulation.

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

Section 2. Applicability. This administrative regulation shall apply to all electrical inspectors in the Commonwealth of Kentucky and to applicants for certification as electrical inspectors.

Section 3. Responsibilities of the Commissioner of the Department of Housing, Buildings and Construction. (1) The Commissioner of the Department of Housing shall require inspectors to be certified. Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code.

(2) The commissioner shall administer this administrative regulation, provide for continuing education of certified electrical inspectors and schedule examinations at regular intervals.

(3) It shall be the duty of the commissioner to investigate all complaints of alleged misconduct of any electrical inspector as certified under this administrative regulation if, in the opinion of the commissioner; there is sufficient evidence to suggest that misconduct exists.

Section 4. Applications Requirements for Temporary Certification. Prior to being examined by the department for "temporary certification" as an electrical inspector, applicants shall comply with the following:

(1) Applicants under "one (1) and two (2) family dwelling" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and design of all types of residential wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years; and

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) Applications for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State

Treasurer, Commonwealth of Kentucky.

(2) Applicants under "general" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and/or design of all types residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) Applications for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(3) Applicants shall receive credit earned for any electrical courses satisfactorily completed from any accredited vocational school or college on a year-for-year basis. Credit for education to replace applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall review all applicants for temporary certification to determine their eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reissued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall pass the department's written examination for the class of temporary certification.

(2) Examinations for qualified applicants shall be administered within thirty (30) days after acceptance by the electrical advisory committee. Examinations required under this section shall be administered at the department's office in Frankfort, Kentucky, unless another location is specifically designated.

(3) Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code and the examination shall be open book.

(4) A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

(5) An applicant shall not be permitted to retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties.

(2) The applicant shall have had not less than five (5) years of experience immediately preceding the application in the installation and/or design, of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required by this subsection, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to electrical construction practices is substantially equivalent.

(3) Each applicant for electrical inspector certification shall submit the Application for Electrical Inspector, Form SFM-EL-1, April, 1996, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday. [~~The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience.~~] Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting.

(4) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(5) The applicant shall provide proof of successful completion of the NCPCCI examination for electrical inspector general or the NCPCCI examination for electrical inspector one (1) and two (2) family.

(6) Following review and approval of the applicant's qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 1(3) of this administrative regulation.

(7) Certificates issued pursuant to this section shall be valid from July 1 to June 30.

(8) Fully certified inspectors shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. The "inactive" certificate shall be converted to "active" in order to be authorized to make electrical inspections.

(9) All certified electrical inspectors holding a valid certification under previous law shall be exempt from the testing requirements of this administrative regulation.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall be issued to individuals and shall not be issued to corporations, partnerships, companies or any other entities.

(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification, Form SFM-EL-1A, April 1996, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(3) All electrical inspector certifications, except temporary certificates, shall expire on June 30 every year. The department shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the terms and conditions of this administrative regulation.

(4) [~~(3)~~] A renewal fee in the sum of twenty-five (25) dollars shall be paid by each certified electrical inspector. The fee shall be paid before June 30 in each succeeding year in order to maintain

certification.

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. These programs shall be acceptable only if approved by the electrical advisory committee.

(2) All electrical inspections shall be made in compliance with the edition of the National Electrical Code, set forth in the Kentucky Building Code (815 KAR 7:100).

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area where he performs inspections to the extent that it is necessary to determine the occupancy load of a facility.

(4) Temporary service approval shall require a red sticker.

(5) The electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections as may be necessary to approve the installation [~~system~~].

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.

(b) "Service only" approvals may be issued by the inspector to provide temporary power for heating and lighting and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow. The issuance of a temporary yellow sticker shall be at the sole discretion of the inspector.

(c) Upon final approval of an electrical installation, the inspector shall attach a green sticker to the main service equipment with his signature and certification number, name of the project and location, stating that the system has been inspected for [~~is in~~] compliance with the National Electrical Code. The inspector shall also provide the owner or the owner's agent with a certificate of compliance.

[~~(c) Temporary approvals issued by the inspector shall not authorize occupancy of the facility. The sticker issued for temporary approval shall be yellow.~~]

(6) [~~(5)~~] Red, yellow and green stickers and certificates of compliance to be used by the electrical inspector shall be issued or approved by the department.

(7) [~~(6)~~] Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection. These records shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of any required permits and the agency granting the permit;

(e) The size and complexity of the structure;

(f) Deficiencies in meeting code requirements and any action required to comply; and

(g) Any other pertinent information considered necessary to allow for a review of the inspection.

(8) [~~(7)~~] These records shall be available for examination by any authorized representative of the department upon request.

Section 9. Complaints and Grievance Procedures. (1) A person who believes that any act or omission of an electrical inspector certified by the department has caused an undue hardship on him as a result of the alleged misconduct in the performance of his duties, may file a complaint against the inspector.

(2) All complaints or allegations of misconduct shall be submitted in writing to the commissioner; shall include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and shall specify the action requested of the commissioner.

(3) Following an investigation, the commissioner may, at his discretion, cause the matter to be heard and a recommendation rendered by the electrical advisory committee; or, he may set the matter for public hearing or take any other appropriate action to resolve or correct the matter.

Section 10. Suspension and Revocation of Certification. The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after a departmental hearing, to have:

(1) Engaged as an electrical contractor, worked as an electrician or engaged in any other activity in the electrical industry or has pecuniary or associational interests which constitutes a conflict of interest; or

(2) Engaged in fraud, deceit or misrepresentation in obtaining certification; or

(3) Been guilty of negligence, incompetence or misconduct as set forth by this administrative regulation in the field of electrical inspection; or

(4) Affixed or caused to be affixed a seal of approval or issuing certificates of approval for any electrical installation subject to his inspection when he has not personally inspected the installation and found it to be satisfactory in accordance with the code; or

(5) Operated as an electrical inspector in any locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations; or

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or

(7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) All state-owned property including all buildings being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) State employed certified electrical inspectors shall also inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) State employed certified electrical inspectors shall assert jurisdiction for the electrical inspection of any project subject to state plan review under the Kentucky Building Code.

(4) State employed certified electrical inspectors may inspect state leased facilities, upon request.

Section 12. Interpretations. If any provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction where appropriate.

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: May 1, 1996

FILED WITH LRC: May 13, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 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 June 20, 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 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: Approximately 10 state certified electrical inspectors who obtain temporary certification each year.

(2) Direct and indirect costs or savings on the: This amendment of the administrative regulation impacts the duration of a temporary certificate and does not impact the cost.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment will have no impact on either cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation is implemented statewide but does not affect the cost of doing business within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The amendment itself will not increase costs or paperwork; renewal information sent out once a year and this information will be included at that time.

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: There are no direct or 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: No additional paperwork requirements created by this amendment.

(4) Assessment of anticipated effect on state and local revenues: State revenue could increase slightly if the need for temporary certification increases as the result of the certification duration being reduced from 18 months to 9 months.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Temporary certification fees will more than cover the administrative costs of this change which is very limited in scope.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: No significant impact because of limited scope of regulation change. Only approximately 10 state certified inspectors will be affected each year.

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: Electrical Advisory Committee considered various alternatives and recommended that temporary certification be reduced from 18 months to 9 months.

(8) Assessment of expected benefits: Will provide greater assurance of qualified inspectors.

(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 created by this amendment. Public safety only slightly enhanced by greater assurance of qualified inspectors.

(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: Enhancement of public safety would not be achieved.

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

(a) Necessity of proposed regulation if in conflict: No known statute, regulation or policy in conflict with this proposed amendment.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different requirements depending on type of inspection and inspector.

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

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

RELATES TO: KRS 227.450 through 227.500

STATUTORY AUTHORITY: KRS 227.4901

NECESSITY AND FUNCTION: In 1990, the General Assembly enacted KRS 227.4901 which requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary in order to establish procedures of administration and reasonable fees to carry on the certification program. This amendment is necessary in order to reduce the administrative burden on the department, reduce the "red tape" for contractors and maintain flexibility in maintaining certification. [~~This amendment is necessary to establish a revival and reinstatement fee for those certified electrical contractors who fail to renew their certification in a timely manner.~~]

Section 1. Definitions. (1) "NAIE" means the examination based upon the National Electrical Code which is developed, administered and scored by the National Assessment Institute.

(2) "NCPCCI" means the National Certification Program for Construction Code Inspectors.

(3) "Kentucky Certificate of Electrical Contractor Examination" means the written document issued by the department which certifies that the person whose name is listed thereon has successfully completed the examination required by this administrative regulation.

Section 2. Approved Examinations. (1) After the effective date of this amendment, any person seeking to obtain a Kentucky Certificate of Electrical Contractor Examination shall pass the examination known as the NAIE.

(2) The department shall issue or renew a Kentucky Certificate of Electrical Contractor Examination to any person who complies with the terms of this administrative regulation.

Section 3. [~~Proof of Insurance. (1) An applicant shall submit to the department proof of $250,000 liability insurance for electrical~~

~~construction work by certificate from the insurance company and he shall also submit an affidavit verifying compliance with Kentucky worker's compensation and unemployment insurance laws.~~

~~(2) If the applicant submits proof of insurance as set forth in subsection (1) of this section, the department shall indicate that fact on the applicant's certificate. This proof shall be submitted annually, upon renewal, in order to continue to be noted upon the certificate.~~

~~Section 4.~~] Application for Certificate. (1) Application shall be made to the department by the individual seeking certification on forms incorporated by reference [~~as outlined~~] in Section 5 [~~7~~] of this administrative regulation.

(2) The original application shall be accompanied by a fee of $100 to cover the administrative costs of processing the application, verifying examination scores and issuing certificates.

(3) The Kentucky Certificate of Electrical Contractor Examination is not a license to do business as an electrical contractor.

Section 4. [~~5.~~] Renewal of Certificates. (1) General. Each person seeking certification pursuant to this administrative regulation shall be required to pay an additional annual renewal fee in the sum of twenty-five (25) dollars no later than June 30 of each year in order to maintain the certification.

(2) Revival fee. Any certified electrical contractor who fails to renew his certification on or before July 1 of each year may have his certification renewed upon payment of the delinquent [~~required~~] renewal fee of $100. After [~~and a revival fee. The revival fee paid between July 1 and December 31 shall be twenty-five (25) dollars, in addition to the renewal fee. If the renewal and revival fees are not paid by~~] January 1 of the following year, the certification shall be automatically cancelled. [~~Upon cancellation of the certification, the revival fee paid on or after January 1 shall be fifty (50) dollars.~~]

(3) Reinstatement. The certification may be reinstated upon petition to the commissioner and for good reason shown in his sole discretion and upon payment of all delinquent renewal fees plus the revival fee of $100 [~~fifty (50) dollars~~].

[~~Section 6. Notice of Penalty. Any certificate or notation of insurance obtained by misrepresentation or fraudulent representation shall void the certificate or notation.~~]

Section 5. [~~7.~~] Electrical Contractor Certification Application Forms. (1) Application for electrical contractor certification. Each applicant seeking certification as an electrical contractor shall submit the Application for Electrical Contractor Certification Form SFM-EL-2, April 1996, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

[~~COMMONWEALTH OF KENTUCKY~~
~~DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION~~
~~APPLICATION FOR~~
~~ELECTRICAL CONTRACTOR CERTIFICATION~~

~~NAME:~~
~~ADDRESS:~~
~~CITY: ZIP CODE:~~
~~TELEPHONE #: DATE OF BIRTH:~~
~~COMMONWEALTH OF KENTUCKY~~
~~COUNTY OF: SIGNED:~~
~~having been duly sworn, states all information herein contained is true and correct to the best of his knowledge and belief; and further states that he shall comply with applicable statutes and administrative regulations of the Department of Housing, Buildings and Construction.~~
~~Subscribed and sworn to before me this __ day of _____, 19__.~~
~~My commission expires:~~
~~Notary Public:~~
~~County:~~
~~NOTE: Attach check or money order for $100.00 payable to the State Treasurer, Commonwealth of Kentucky.~~
~~RETURN TO: Office of the State Fire Marshal~~
~~Electrical Contractor Certification Clerk~~
~~1047 U.S. 127 South, Suite #1~~
~~Frankfort, KY 40601-4337~~
~~OFFICE USE ONLY:~~]

(2) Renewal application for electrical contractor certification. Each applicant seeking renewal of his application for electrical contractor certification shall submit the Renewal Application for Electrical Contractor Certification Form SFM-EL-2A, April 1996, hereby incorporated by reference to the Department of Housing. Copies of the renewal application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

[~~CERTIFICATE #:~~
~~COMMONWEALTH OF KENTUCKY~~
~~DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION~~
~~RENEWAL APPLICATION FOR~~
~~ELECTRICAL CONTRACTOR CERTIFICATION~~

~~NAME:~~
~~ADDRESS:~~
~~CITY: ZIP CODE:~~
~~TELEPHONE #: DATE OF BIRTH:~~
~~COMMONWEALTH OF KENTUCKY~~
~~COUNTY OF: SIGNED:~~
~~having been duly sworn, states all information herein contained is true and correct to the best of his knowledge and belief; and further states that he shall comply with applicable statutes and the rules and administrative regulations of the Department of Housing, Buildings and Construction.~~
~~Subscribed and sworn to before me this __ day of _____, 19__.~~
~~My commission expires:~~
~~Notary Public:~~
~~County:~~
~~NOTE: Attach check or money order for $25.00 payable to the State Treasurer, Commonwealth of Kentucky.~~
~~RETURN TO: Office of the State Fire Marshal~~
~~Electrical Contractor Certification Clerk~~
~~1047 U.S. 127 South, Suite #1~~
~~Frankfort, KY 40601-4337~~
~~OFFICE USE ONLY:~~

~~(3) Kentucky Workers' Compensation and Unemployment Insurance compliance.~~

~~COMMONWEALTH OF KENTUCKY~~
~~DEPT. OF HOUSING, BUILDINGS & CONSTRUCTION~~
~~Kentucky Workers' Compensation & Unemployment Insurance~~

~~* The use of this form is optional. If you want your wallet card to indicate compliance with insurance, unemployment insurance and workers' compensation laws, file this form and a copy of your insurance certificate along with your application.~~

~~The affiant herein does swear or affirm that he is in full compliance with Kentucky Workers' Compensation and Unemployment Insurance laws and that he has a valid liability insurance policy covering his business of electrical contracting and installation in the total amount of at least $250,000 as shown on the attached certificate~~

~~from the insurance company.~~

~~Applicant:~~

~~STATE OF KENTUCKY~~
~~COUNTY OF:~~
~~Subscribed and sworn to me this __ day of _____, 19__.~~

~~Notary Public:~~
~~My commission expires:~~
~~*NOTICE: If this information is not provided, you shall provide it for every electrical permit you seek from the city or county.~~

~~* *~~]

CHARLES A. COTTON, Commissioner
LAURA M. DOUGLAS, Secretary
APPROVED BY AGENCY: May 1, 1996
FILED WITH LRC: May 13, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 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 June 20, 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 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: Electrical contractors who desire state certification and any local government agency licensing electrical contractors and issuing permits for electrical wiring.

(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: The administrative regulation will be implemented statewide, however, the cost of living and employment will not be impacted by this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation is implemented statewide but does not affect the cost of doing business within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This amendment itself will not increase costs or paperwork.

1. First year following implementation: $100 certification fee.

2. Second and subsequent years: $25 renewal fee, plus revival or reinstatement fee, if applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Little impact on promulgating agency beyond record keeping. Program supported by fees.

1. First year: $100 fee per applicant.

2. Continuing costs or savings: $25 renewal fee per applicant.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: applications, certificates and personnel to review insurance compliance.

(4) Assessment of anticipated effect on state and local revenues: There is no direct impact by this administrative regulation because it is not a mandatory certification program. Local governments may license or not, but if they do, they must use Department test.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: not applicable to 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: not applicable to this amendment.

(b) Kentucky: Application of this amendment will affect only a very few individuals who fail to renew their certification by the stated deadline and on a statewide basis will not have an economic impact.

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

(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 to this amendment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: not applicable to 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: No known conflict with other statutes or 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:

(11) TIERING: Is tiering applied? No. These amendments apply to any certified contractor who attempts to renew his certification.

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? If yes, complete questions 2-4. Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation affects the electrical section of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation requires any local government which chooses to license electrical contractors to accept and administer the particular test chosen by the department if the local government requires examination as a condition of licensure.

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:

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Maternal and Child Health
(Amendment)

902 KAR 4:040. Special Supplemental Food Program for Women, Infants and Children (WIC).

RELATES TO: KRS 194.050, 211.180, 7 CFR Part 246

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050(1), 211.090, 211.180, 7 CFR Part 246, 42 USC 1786, EO 95-79

NECESSITY AND FUNCTION: 42 USC §1786, the "Child Nutrition Act of 1966," as amended and 7 CFR Part 246, authorizes grants for the Special Supplemental Food Program for Women, Infants and Children (WIC). The Cabinet for Health Services [~~Human Resources~~] is authorized by KRS 194.050 to adopt such rules and administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and as are necessary to cooperate with federal agencies for proper administration of the cabinet and its programs. The function of this administrative regulation is to [~~repeal 902 KAR 4:060 and to~~] set out the application and participation process for the Kentucky Special Supplemental Food Program for Women, Infants and Children (WIC) for [~~both~~] women, infants, children, [~~and~~] vendors, and to include the sanction, and hearing process. Executive Order 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. [~~This administrative regulation includes the substance of the administrative regulation to be repealed; therefore, no longer necessitating the old administrative regulation.~~]

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services [~~Human Resources~~].

(2) "Secretary" means Secretary for the Cabinet for Health Services [~~Human Resources~~].

(3) "State agency" means the Cabinet for Health Services [~~Human Resources~~] or its designated representative.

(4) "Vendor" means a vendor of food items who applies for participation in the Special Supplemental Food Program for Women, Infants and Children (WIC) or who, by contract, participates in the Special Supplemental Food Program for Women, Infants and Children (WIC).

(5) "WIC program" means the Special Supplemental Food Program for Women, Infants and Children (WIC) administered pursuant to 42 USC §1786.

(6) "Person" means for purposes of a fair hearing, any applicant or participant in the WIC Program.

(7) "Local agency" means for purposes of a fair hearing, any applying or participating WIC agency.

Section 2. The purpose of the Special Supplemental Food Program for Women, Infants and Children (WIC) is to provide supplemental foods and nutrition education at no cost to eligible persons and to serve as an adjunct to good health care.

Section 3. To be certified as eligible to participate in the WIC Program, a person shall:

(1) Be categorically eligible as follows:

(a) Pregnant women;

(b) Postpartum women, up to six (6) months after termination of pregnancy, including those women who miscarry, have a stillbirth or abort;

(c) Breastfeeding women, up to the infant's first birthday;

(d) Infants, zero to one (1) year of age; or

(e) Children, one (1) to five (5) years of age.

(2) Be a resident of the state of Kentucky and the geographical area served by the agency.

(3) Meet the cabinet approved income criteria.

(4) Meet the nutritional risk criteria as outlined. The following conditions are considered the basis for certification:

(a) Detrimental or abnormal nutritional conditions detectable by biochemical or antropometric measurements, such as anemia, underweight, overweight, abnormal pattern of weight gain in a pregnant woman, low birth weight in an infant, or stunting in an infant or child;

(b) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in a pregnant woman, or failure to thrive in an infant;

(c) Dietary deficiencies that impair or endanger health, such as inadequate dietary patterns assessed by a twenty-four (24) hour dietary recall, dietary history, or food frequency checklist;

(d) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before sixteen (16) months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation;

(e) An infant under six (6) months of age may be determined to be at risk if the infant's mother was a program participant during pregnancy or met risk criteria outlined during pregnancy; and

(f) A participant who has previously been certified eligible for the program may be considered to be at nutritional risk in the next certification period if the competent professional authority determines there is a possibility of regression in nutritional status without the supplemental foods. Limits on regression may be set for certain conditions, e.g., inadequate diet.

Section 4. Program benefits shall be based upon certifications established in accordance with the following time frames:

(1) Pregnant women shall be certified for the duration of their pregnancy and for up to six (6) weeks postpartum.

(2) Postpartum women shall be certified for up to six (6) months postpartum.

(3) Breastfeeding women shall be certified at intervals of approximately six (6) months and ending with the breastfed infant's first birthday.

(4) Infants shall be certified at intervals of approximately six (6) months except infants under six (6) months of age may be certified for a period extending up to the first birthday provided the quality and accessibility of health care services are not diminished.

(5) Children shall be certified at intervals of approximately six (6) months and ending with the end of the month in which a child reaches the fifth birthday.

Vacancies in the program shall be filled as they occur unless maximum participation has been reached. At that time, vacancies shall be filled by a priority system based upon the nutritional risk of the patient.

Section 5. Pregnant and breastfeeding women, infants and migrants shall be screened and notified of program eligibility or ineligibility within ten (10) days. Agencies requesting to extend the processing standards to fifteen (15) days shall submit a written request justifying the need for the extension and a plan of action on how and when they shall meet the above standard. all other persons applying for the program shall be screened and notified of program eligibility or ineligibility within twenty (20) days.

Section 6. (1) A person shall be informed in writing of the right to a fair hearing and the method by which a hearing may be requested at the time of:

(a) [~~(1) Each certification;~~

~~(2)~~] When found ineligible;

(b) [~~(3)~~] Disqualification or suspension during a certification period; and [~~for program abuse;~~

~~(4) When placed on the waiting list; and~~]

(c) [~~(5)~~] An action which resulted in a claim against an individual for repayment of improperly issued benefits.

(2) Persons requesting a fair hearing shall contact the appropriate WIC agency within sixty (60) days from the date of notice [~~to deny or terminate benefits~~] and a fair hearing shall be arranged. The hearing shall be held within three (3) weeks from receipt by the local agency of the hearing request. The WIC agency shall provide the appellant with a minimum of ten (10) days advance written notice of the time and place of the hearing.

(a) The WIC agency shall provide the appellant or their representative an opportunity to:

1. Review prior to and during the hearing documents and records presented to support the decision under appeal;

2. Be assisted or represented by an attorney or other persons, if desired;

3. Bring witnesses to testify;

4. Present oral or documentary evidence and agreement supporting their position and question or refute any testimony or other evidence; and

5. Confront and cross-examine any adverse witness.

(b) The hearing officer(s) shall decide upon validity of the case based upon the record of the hearing and the relevant statutory and regulatory provisions governing the WIC Program.

(c) The basis of the decision shall be in writing and shall be the final binding decision of the WIC agency.

(d) A decision shall be reached and written notification of the decision forwarded to the person no later than forty-five (45) days from receipt of the request for hearing.

(3) A person may appeal a local hearing officer [~~body's~~] decision to the secretary within fifteen (15) days of the mailing date of the hearing decision notice pursuant to Section 11 of this administrative regulation.

Section 7. (1) An appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that state agency and local officials can effectively manage a review of the vendors shall be authorized. Only authorized vendors may redeem food instruments in order to provide supplemental food to participants.

(2) In order to be an authorized WIC vendor, an applying vendor shall:

(a) Provide all information, including sales volume, requested by the state agency.

(b) Stock, at all times, minimum inventory in accordance with the "Quantified Minimum Inventory Requirements." Pharmacies need to stock formula in accordance with the "Quantified Minimum Inventory Requirements."

(c) As appropriate, be in compliance with the Kentucky Retail Market Sanitation Regulations (902 KAR 45:045) and have a valid Kentucky Retail Market Permit under the current owner's name.

(d) Have prices commensurate with the area's authorized WIC vendors. Prices are compared according to state agency policy.

(e) Not be disqualified or withdrawn by USDA from participation in another FNS program nor denied application to participate in the food stamp program.

(f) Be requesting application for a business whose primary purpose is to be a retail grocery. (Does not apply to drug stores.) Direct distribution outlets and wholesale food establishments are not eligible. Retail firms whose primary business is something other than a retail grocery are not normally eligible for the program. This includes dairies, gas stations, specialty stores, liquor stores, home delivery groceries, bait shops, etc. In order for one these retail firms to be authorized, the applicant firm shall have a recognized grocery department in a stationary location which is a separate and distinct area and stocks staple food items in addition to WIC approved foods. Staple food items are defined as meat, poultry, fish, bread and breadstuff, cereals, vegetables, fruit, fruit and vegetable juices, dairy products and the like. Food items such as coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments and spices are not considered to be staple foods. All stores shall have:

1. A separate area as defined above;

2. A stock of foods other than staple food items as defined above; and

3. Twenty (20) percent of their gross sales in total food sales excluding their specialty items. (Bakery goods for bakery, produce for fruit and vegetable stands.)

Dairies and home delivery groceries shall not be approved if they operate solely as a mobile operation.

(g) Be open for business year round on a full-time basis at least eight (8) hours per day, six (6) days per week.

(h) Be accessible to monitoring by state and federal officials without prior notice.

Section 8. (1) A vendor shall be informed in writing of the right to a fair hearing and the method by which a hearing may be requested for the following:

(a) Denial of application to participate in the program; and

(b) Disqualification or other adverse action which affects participation during the agreement performance period.

(2) Expiration of an agreement with a vendor is not subject to appeal.

(3) Vendor shall request a fair hearing in accordance with Section 11 of this administrative regulation. [~~Vendors requesting a fair hearing shall contact the appropriate WIC agency within thirty (30) days from the date of notice to deny or terminate participation and a fair hearing shall be arranged.~~

~~(4) A vendor may appeal a local hearing body's decision to the secretary within fifteen (15) days of the mailing date of the hearing decision notice.~~]

Section 9. For the following acts or circumstances committed by the vendor, his employee or agent, the cabinet shall impose the following sanctions:

Type of Abuse	Period of Disqualification 1st Offense	2nd Offense	3rd Offense
1. Providing cash/ credit for WIC checks (trafficking)	1 year	2 years	3 years
2. Selling nonfood items for WIC checks	6 months	1 year	18 months
3. Selling related but but unauthorized foods	Written Warning	3 months	6 months
4. Charging more than the current retail market price for WIC food items	6 months	1 year	18 months
5. Charging for food not received by the WIC participant	1 year	2 years	3 years

6.	Charging for food not authorized on the WIC check	6 months	1 year	18 months
7.	Redeeming WIC checks outside valid period	Written Warning	3 months	6 months
8.	Not recording actual purchase price on WIC checks at time of purchase	Written Warning	3 months	6 months
9.	Giving due bills, IOU's or rainchecks	Written Warning	3 months	6 months
10.	Suspension from Food Stamp Program	Equivalent to food stamp disqualification period (does not have to run concurrently)		
11.	Nonpayment of a claim made by state agency	3 months	6 months	1 year
12.	Discrimination (separate WIC lines, denying trading stamps, other customer courtesies)	Written Warning	3 months	6 months
13.	Failure to allow monitoring and inspection of store premises, records and procedures or access to WIC checks	Written Warning	3 months	6 months
14.	Failure to return WIC vendor authorization stamp upon request	Add 3 months to previously established disqualification period or monetary penalty in the amount of unauthorized funds received or both		
15.	Requiring cash purchase to redeem WIC checks	Written Warning	3 months	6 months

Notice of sanction to be imposed by the cabinet and the date upon which such sanction is to commence may be hand-delivered to the vendor or mailed certified mail return receipt requested to the vendor's last known address.

Section 10. If an agency is denied application, has participation in the program denied, or any other adverse action affecting participation is taken, then any appeal shall be in accordance with Section 11 of this administrative regulation.

Section 11. [~~10.~~] (1) Any participant, vendor or local agency aggrieved by a decision of the cabinet to impose a sanction authorized by law or this administrative regulation may file a written request for a hearing with the cabinet no later than fifteen (15) [~~twenty (20)~~] days after receipt of notice of adverse action. Upon receipt of a request for a hearing, the secretary shall appoint an [~~one (1) or more~~] impartial hearing officer[~~(s)~~] to conduct the hearing. Within ten (10) [~~five (5)~~] days of a request for a hearing, the cabinet shall issue a notice of hearing in compliance with KRS 13B.050. [~~advise the subject vendor of the date, time and place of the scheduled hearing and of the opportunity to review the records of the cabinet prior to the date of the hearing.~~]

(2) [~~On the date of~~] The hearing conducted on the appeal shall comply with the requirements of KRS Chapter 13B, including KRS 13B.080 and 13B.090. The hearing officer may order where relevant an independent medical assessment or professional evaluation from a source mutually satisfactory to the participant and the state agency. [~~the subject vendor shall have:~~

~~(a) An opportunity to present its case against the imposition of any sanction;~~

~~(b) The opportunity to be represented by counsel, if desired; and~~

~~(c) The opportunity to confront and to cross-examine witnesses.~~]

(3) The hearing officer(s) shall decide upon the validity of the violation and sanction imposed based upon the record of the hearing and the relevant statutory and regulatory provisions governing the WIC program. [~~The basis of the decision shall be in writing and shall be the final decision of the cabinet.~~]

(4) A recommended decision complying with KRS 13B.(10)(l) shall be forwarded to the agency head. A decision shall be reached by the agency head and written notification of the decision forwarded to the vendor no later than sixty (60) days from the date of receipt of the written request for hearing. The decision shall advise the appellant of the right to appeal pursuant to KRS 13B.140. [~~Any vendor aggrieved shall have the right to appeal such decision to the circuit court of the county wherein the vendor has his principal place of business.~~]

[~~Section 11. 902 KAR 4:060, Kentucky state plan of program operations and administration for the special supplemental food program for women, infants and children (WIC), is hereby repealed.~~]

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this amended administrative regulation shall be held on June 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 June 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 amended 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 amended administrative regulation. Send written notification of intent to attend the public hearing or written comments on the amended administrative regulation to: William K. Moore, Acting General Counsel for Administrative Law, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Fran Hawkins

(1) Type and number of entities affected: The following are affected; 53 local agencies, approximately 117,000 participants and approximately 1700 WIC vendors.

(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: Public comment was not received from the Notice of Intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: Public comment was not received from the Notice of Intent.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Existing administrative regulation 902 KAR 4:040 is being amended. This amendment does not alter the existing administrative regulation to the point that there is a fiscal impact upon the affected parties.

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body: Existing regulation 902 KAR 4:040 is being amended. This amendment will not have a direct or indirect cost savings or a change in paperwork.

(4) Assessment of anticipated effect on state and local revenues: The amendment to this regulation will not have any effect on state or local revenues.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: The Special Supplemental Food Program for Women, Infants and Children (WIC) is 100% federally funded.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: Public comment was not received from the Notice of Intent.

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

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: Existing administrative regulation 902 KAR 4:040 is being amended primarily to conform with the administrative hearing process of 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: This regulation sets forth the application and participation process for women, infants children and vendors in the WIC Program, as well as the hearing process. It also includes the sanction process for vendors.

(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: Not implementing the amended administrative regulation would result in the loss of federal funds due to not being in compliance with 7 CFR Part 246. This applies especially to the participation and sanction process for WIC vendors and the time frames for the hearing processes.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: The program is unaware of any conflict, overlapping or duplication of 902 KAR 4:040 with any other statute, administrative regulation or governmental policy.

(a) Necessity of proposed regulation if in conflict: NA

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No, all participants, vendors and local agencies are subject to the same standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 246

2. State compliance standards. The state agency is responsible for the effective and efficient administration of the program in compliance with 7 CFR Part 246.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations set forth:

a. Fair hearing procedures for participants.

b. Participant eligibility.

c. Food delivery system which includes authorization of vendors and vendor sanctions.

d. Administrative appeals for vendors and local agencies.

4. Will this amended 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. NA

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this amended administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this amended administrative regulation will affect the local government or only a part or division of the local government. Local health departments which provide the services to participants of the WIC program are affected.

3. State the aspect or service of local government to which this amended administrative regulation relates. The amended administrative regulation relates to local health departments which provide the WIC program.

4. How does this amended administrative regulation affect the local government or any service it provides? Administrative regulation 902 KAR 4:040 which is being amended is already in existence and is therefore being used by the local health departments. This amendment clarifies the hearing process for participants, in accordance with federal regulations, which is held at the local agency level.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 7:010. Hotel and motel code.

RELATES TO: KRS 219.011 to 219.081, 219.991(1)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 219.011 to 219.081 and 219.991(1) directs the Health Services [~~Human Resources~~] Cabinet to regulate hotels. KRS 219.041(3) directs the Health Services [~~Human Resources~~] Cabinet to adopt a State Hotel Code, which includes, among other things, requirements for the issuance, suspension and revocation of permits to operate; submission of plans for construction and equipment layout; plumbing; lighting; ventilation; water supply; sewage disposal; sanitary standards for operation; and other matters deemed necessary to insure a safe and sanitary operation of a hotel. Executive Order 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.

Section 1. Citation of Administrative Regulation. This administrative regulation may be cited as the "State Hotel Code."

Section 2. Definitions. As used in this administrative regulation:

(1) "Employee" means any person working in a hotel, including janitors, maids, porters, and other persons whose duties include the cleaning of rooms, toilets, or other parts of the building or the carrying of ice or ice water to guests.

(2) "Ice dispensing machine" means any self-service or semiself-service machine operated by a mechanism which, upon insertion of

a coin, coins, or tokens, or by other devices such as levers or switches, dispenses ice either in bulk or in package form.

(3) "Public rest room" means any facility that provides toilet and hand-washing facilities for the general public.

(4) "Self-service ice storage bin" means a self-service machine or storage bin in which ice is manufactured or stored in bulk form and the ice removed by the hotel guest through use of an ice scoop or other similar device.

Section 3. Application for a Permit. (1) Application for a permit required by KRS 219.021 shall be made on forms provided by the cabinet and include:

(a) Applicant's full name and address and indicate whether the applicant is an individual, firm or corporation;

(b) If a partnership, the names of the partners, with their addresses;

(c) The location of the hotel; and

(d) The signature of the applicant or applicants.

(2) Upon receipt of an application the cabinet shall make an inspection of the hotel to determine compliance with the provisions of this administrative regulation. When inspection reveals that the applicable requirements of this administrative regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. Hotel Water Supply and Ice. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply for a hotel shall be developed and approved in accordance with applicable requirements of the Natural Resources and Environmental Protection Cabinet; provided, however, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and the hotel supply shall be discontinued.

(2) Hot and cold running water under pressure shall be provided in all bathrooms and toilet rooms.

(3) Ice used for any purpose shall be made from water which comes from an approved source, and shall be used only if it has been manufactured, stored, transported, and handled in a sanitary manner.

(4) Self-service ice provided for the hotel guest shall be dispensed through use of ice dispensing machines or prepackaged for individual hotel guests from an approved source in all new hotels constructed after the effective date of this administrative regulation; provided, however, that ice making equipment located in individual rooms shall not be prohibited. Self-service ice storage bins presently being used may be continued in use provided that the machines are maintained in good repair and capable of being properly cleaned. In all cases where the replacement of a self-service ice storage bin becomes necessary, or additional machines added, an ice dispensing machine shall be installed.

Section 5. Hotel Sewage and Waste Disposal. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the cabinet; provided, however, if a public sewerage system subsequently becomes available, connections shall be made thereto and the hotel sewerage system shall be discontinued.

Section 6. Toilet and Bathing Facilities. (1) Each hotel shall be provided with adequate and conveniently located toilet and bathing facilities. Except as provided by KRS 219.021(3) for existing hotels, toilet and bathing facilities shall be provided for each sleeping room in accordance with the requirements of the State Building Code. Toilet and bathing fixtures shall be of a sanitary design and readily cleanable. Toilets and bathing facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in public toilet rooms for women shall be covered. Public rest room facilities for both sexes shall be provided when required by the State Building Code in all new hotels constructed after the effective date of this administrative regulation. The doors of all public rest rooms shall be self-closing.

(2) Each hotel shall provide adequate, conveniently located hand-washing facilities at each toilet and bathroom including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleansing soap and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(3) All plumbing in hotels shall comply with the state plumbing code.

Section 7. Storage, Collection and Disposal of Hotel Refuse. (1) All containers used in guest rooms, lobbies, hallways and public assembly rooms for storage of refuse and rubbish containing food waste shall be constructed of durable metal or other approved types of materials, which do not leak and do not absorb liquids. Such containers shall be thoroughly cleaned on the inside and outside each time they are emptied unless liners are used.

(2) All outside storage containers shall be constructed of durable metal or other approved types of materials, which do not leak and do not absorb liquids, and shall be provided with tight fitting lids or covers and shall, unless kept in a special vermin- proof room or enclosure, be kept covered when stored. Each storage container shall be cleaned at such frequency as to prevent a nuisance.

(3) The rooms, enclosures, areas and containers shall be adequate for storage of all refuse accumulating on the premises. Adequate cleaning facilities shall be provided and each storage room or area shall be thoroughly cleaned after the emptying or removal of refuse.

(4) All refuse and waste collected at a hotel shall be disposed of in a safe and sanitary manner. In the event a permitted site or facility approved by the Natural Resources and Environmental Protection Cabinet is available, disposal shall be at such site or facility.

Section 8. Room Construction and Layout. (1) All structures used as hotels shall be of permanent, weatherproof construction with sound floors, walls and ceilings.

(2) All habitable rooms, bathrooms, and halls shall have adequate lighting, ventilation and heating.

(a) The heating system shall be capable of maintaining a temperature of sixty-eight (68) degrees Fahrenheit.

(b) Natural and artificial lighting for general cleaning purposes and safety of guests shall be at least five (5) foot-candles in guest rooms, stairways and hallways.

(c) Lighting in reading areas of guest rooms and public meeting rooms shall be thirty (30) foot-candles.

(d) Lighting at bathroom mirrors shall be forty (40) foot-candles.

(3) Sleeping rooms shall have at least one (1) window to the outside air which can be easily opened unless other openings or mechanical devices are used for room ventilation. All sleeping rooms shall have a door opening directly to the outside or into a hallway leading to the outside.

Section 9. Soap, Towels, Washcloths, Drinking Glasses and Ice Containers. (1) Rooms used for sleeping purposes shall be provided with soap, towels, washcloths and drinking glasses.

(a) Two (2) clean towels and one (1) clean washcloth of adequate size shall be provided for each occupant.

(b) One (1) multiuse drinking glass or individual single-service cup shall be provided for each occupant.

(2) Ice storage containers, scoops and drinking glasses, unless they are of the single-service type, shall be smooth, impervious

material and designed to facilitate cleaning, and shall be stored, handled and dispensed in a sanitary manner.

(3) Multiuse drinking glasses and ice containers shall be washed and sanitized according to procedures as set forth in the state food service code.

(4) Hotels which do not have adequate and effective facilities for cleaning and sanitizing multiuse drinking glasses and ice containers shall use single-service articles. All single-service articles shall be stored, handled and dispensed in a sanitary manner and shall be used only once. Single-service articles shall be made from nontoxic materials.

(5) Multiuse drinking glasses or single-service containers placed in sleeping rooms shall be individually wrapped or stored on a clean surface in an inverted position.

Section 10. Hotel Beds and Bedding Accessories. Mattress pads or covers shall be used on all mattresses. Beds, mattresses, springs, slats, mattress pads and covers shall be clean and free from vermin. Each bed shall be provided with two (2) sheets; and one (1) pillow and one (1) pillow case for each occupant. Sheets and pillow cases shall be kept clean and changed at least once per week or more often if necessary or when there is a new occupant. All beds shall be supplied with sufficient blankets or coverings to keep the occupant warm.

Section 11. Maintenance of Rooms, Furniture and Accessories. All sleeping rooms, hallways, lobbies and other facilities shall be kept clean and in good repair. Furniture, drapes, curtains and shades shall be kept clean and in good repair.

Section 12. Linen Storage. Adequate storage areas, rooms or cabinets shall be provided for all supplies, linens and equipment, and shall be kept neat, orderly and clean. Clean linens shall be stored in cabinets or on shelves in a linen storage room. Soiled linens shall be so handled and stored as not to come in contact with clean linens.

Section 13. Vermin Control. Effective measures shall be taken to control vermin and other pests including their entrance into the hotel.

Section 14. Poisonous and Toxic Materials. Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in hotels. Such materials shall be properly stored and identified and shall be used only in such manner and under such conditions as will not constitute a hazard to employees or customers.

Section 15. Hotel Swimming Facilities. Any swimming or bathing facility provided for use by hotel occupants shall be constructed and operated in accordance with the State Building Code and the Kentucky public swimming and bathing facilities administrative regulation.

Section 16. Hotel Personnel. (1) No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores or an acute respiratory infection, shall work in any area of a hotel in any capacity in which there is a likelihood of such a person contaminating bedding, and other surfaces with pathogenic organisms, or transmitting disease to other individuals, and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the hotel has reason to suspect that any employee has contracted any disease in communicable form or has become a carrier of such a disease, he shall notify the cabinet immediately.

(2) All employees shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty. They shall wash their hands thoroughly in an approved hand-washing facility before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet without first washing his hands.

Section 17. Procedure when Infection is Suspected. When the cabinet has reasonable cause to suspect the possibility of disease transmission from any hotel employee, the cabinet shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated and take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from the hotel;

(2) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and

(3) Require adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

Section 18. Plan Review of Future Construction. No person shall construct or extensively alter a hotel, or convert an existing structure for use as a hotel, until properly prepared plans and specifications for such construction or alteration, showing layout, arrangements, and construction materials, and the location, size and type of fixed equipment and facilities and a plumbing riser diagram, have been submitted to and approved by the cabinet before such work is begun. If the construction plans are not acceptable, the cabinet shall give the reason therefor in writing to the person submitting the construction plans and, if the objection can be corrected, the plans can be resubmitted for another review.

Section 19. Inspection of Hotels. (1) At least once every twelve (12) months, the cabinet shall inspect each hotel and shall make additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Whenever an agent of the cabinet makes an inspection of a hotel, he shall record his findings on an official cabinet inspection report form and provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth the specific violations(s) found;

(b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and

(c) State that failure to comply with any notice issued in accordance with the provisions of this administrative regulation may result in suspension of the permit.

Section 20. Suspension of Permit. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the authorized agents of the cabinet in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event the permit holder may request a hearing which shall be conducted in accordance with 902 KAR 1:400. [~~granted as soon as practicable.~~]

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder within such ten (10) day period.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this administrative regulation shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall~~

~~make a finding of fact and conclusion of the law. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.~~]

Section 21. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 22. Revocation of Permits. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period.

RICE C. LEACH, MD. Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 800 permitted hotels/motels statewide.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment of an existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 219.031.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to an existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health department and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 219.031 states: "The cabinet may carry out the provisions of KRS 219.011 to 219.081 and regulations relating to hotels through local health departments."

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.
2. State compliance standards. None exists.
3. Minimum or uniform standards contained in the federal mandate. None exists.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of State and Local Health Administration
(Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.1755, EO 95-79 [~~211.090, 212.170, 1994 Ky. Acts ch. 336~~]
NECESSITY AND FUNCTION: KRS 211.170 and 211.1755 [~~211.090, 212.170, and 212.870~~] requires the cabinet to supervise the personnel functions of local health departments and [~~. House Bill 631 provides that the cabinet shall~~] establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees. Executive Order 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.

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if he meets the minimum requirements of the position having a higher salary and is certified by the department.

(2) The employee shall serve a probationary period to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.

(3) An employee who is promoted shall have his salary raised to the greater of the following:

(a) The amount required to raise the salary of the employee to the minimum established for the class;

(b) Three (3) percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Six (6) percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5) A permanent employee promoted from a classified position to an unclassified position retains his status in the classified service. If separated from an unclassified position following promotion, an employee shall revert to the class in which he previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a permanent employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency, may be made at any time by the appointing authority.

(2) A transfer of a permanent employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon certification of the department. The department may require a qualifying examination.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period;

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;

(c) Documented disciplinary problems or the inability of an employee to perform the duties and responsibilities required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is to a classification [~~having a~~] one (1) [~~grade~~] or two (2) grades lower [~~salary~~].

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) Except as provided in subsection (6) of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employees current grade level and the grade of the classification to which the employee is demoted.

(5) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(6) If an employee is demoted during the initial probationary period, the employee shall continue in his probationary period as if the original appointment had been to the position of the lower class.

(7) An employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall have his salary reduced to the level prior to promotion.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: May 14, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Nelson

(1) Type and number of entities affected: 49 local health departments established under KRS 212 excluding the Louisville-Jefferson County, Lexington-Fayette County and the Northern Kentucky District health department.

(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 hearing was requested.

(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 hearing requested.

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

1. First year following implementation: local health departments currently use the automated personnel system to initiate personnel actions supplemented by position descriptions, approval letters, and other appropriate correspondence, etc. This administrative regulation would not require any additional paperwork or reporting.

2. Second and subsequent years: local health departments would continue to use the automated personnel system to initiate personnel actions supplemented by position descriptions, approval letters, etc. This administrative regulation would not require any additional paperwork or reporting.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: the costs are already incurred by the promulgating agency and are related to the costs to maintain the automated personnel system, staff time to review and approve actions and filing a hard copy of the personnel action in the employee file.

2. Continuing costs or savings: same as (3)(a)1.

3. Additional factors increasing or decreasing costs: Factors that would influence are primarily related to the volume of personnel actions requested by local health departments.

(b) Reporting and paperwork requirements: no change would occur in paperwork.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds approved 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 public hearing requested.

(b) Kentucky: no public hearing requested.

(7) Assessment of alternative methods; reasons why alternatives were rejected: no alternative were considered as this regulation continues an existing administrative activity.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: this administrative regulation would not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: this administrative regulation would not have an effect on public health and environmental welfare.

(c) If detrimental result would result, explain detrimental effect:

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

(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? Tiering is not applied as this administrative regulation would apply to all local health departments and are applied uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate requiring the amendment of this administrative regulation

2. State compliance standards. No state compliance standards are required.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate thus no minimum or uniform standards.

4. Will this regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Not applicable since there is not a federal mandate.

5. Justification for the stricter standards, or additional or different responsibilities or requirements. Not applicable since there is not a federal mandate.

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. This regulation describes the provisions and requirements of promotions, transfers, and demotion of local health department employees.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

(3) State the aspect or service of local government to which this administrative regulation relates. See above.

(4) How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET HEALTH SERVICES
Department for Health Services
Division of State and Local Health Administration
(Amendment)

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

RELATES TO: KRS 211.170(1), (2), 212.280 [~~212.170(4), 212.870~~]

STATUTORY AUTHORITY: KRS 194.050, [~~211.090,~~] 212.170, 212.1755, 212.870, EO 95-79 [~~1994 Ky. Acts ch. 336~~]

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 [~~House Bill 631~~] provides that the cabinet shall establish policies and procedures for the local

health department personnel program. KRS 212.170, 212.230, and 212.870 describes the requirements for and process of appointing a health officer or a health department director for a local health department. This administrative regulation describes the process of appointing a health officer or a health department director of a health department and the provision of coverage or noncoverage of the merit system. Executive Order 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.

Section 1. Appointment of Health Officer. (1) An agency shall be under the direction of a health officer appointed in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments; and

(b) 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation; and

(c) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

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

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualifications of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director shall maintain their status after the effective date of this administrative regulation.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments;

(b) 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation;

(c) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(d) 902 KAR 8:140, Appointment of health officers of local health departments.

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2(3) and (4) of this administrative regulation, if a health officer or health department director in the unclassified service is removed by the board of health or the department, he shall be notified in writing, and within fourteen (14) days may make a written request for a pretermination conference [~~hearing~~].

(2) If no request is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for pretermination conference [~~hearing~~] is made, the pretermination conference [~~hearing~~] shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the pretermination conference [~~hearing~~] has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or health department director position may revert to the position from which he was promoted or may be considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position may only be reverted to a position in the classified service for which he qualifies.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 14, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Nelson

(1) Type and number of entities affected: 49 local health departments established under KRS Chapter 212 excluding the Louisville-Jefferson County, Lexington-Fayette County and the Northern Kentucky District Health Department.

(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 hearing was requested.

(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 hearing requested.

(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 details a process for the appointment of a health officer or a public health director of a local health department. Local health departments would use the automated personnel system to initiate personnel actions supplemented by position descriptions, approval letters, etc.

2. Second and subsequent years: local health departments would continue to use the automated personnel system to initiate personnel actions supplemented by position descriptions, approval letters, etc. This administrative regulation would not require any additional paperwork or reporting.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: the costs are already incurred by the promulgating agency and are related to the costs of staff to review applications for vacant positions should they occur and approve actions and filing a hard copy of the personnel action in the employee file.

2. Continuing costs or savings: same as (3)(a)1.

3. Additional factors increasing or decreasing costs: Factors that would influence costs are primarily related to the volume of personnel actions requested by local health departments.

(b) Reporting and paperwork requirements: no change would occur in paperwork.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds approved 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 public hearing requested.

(b) Kentucky: No public hearing requested.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative were considered as this regulation continues an existing administrative activity.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation would not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation would not have an effect on public health and environmental welfare.

(c) If detrimental result would result, explain detrimental effect:

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

(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? Tiering is not applied as this administrative regulation would apply to all local health departments and are applied uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate requiring the amendment of this administrative regulation.

2. State compliance standards. No state compliance standards are required.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate thus no minimum or uniform standards.

4. Will this regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Not applicable since there is not a federal mandate.

5. Justification for the stricter standards, or additional or different responsibilities or requirements. Not applicable since there is not a federal mandate.

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. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet of Human resources. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources. The administrative regulation relates to the appointment of a health officer or public health director of a local health department.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The affect of this administrative regulation on a health department would depend on whether there would be a vacancy in a health department and the necessary steps for the recruitment, review of applications, and the appointment process.

3. State the aspect or service of local government to which this administrative regulation relates. See (1) above.

4. How does this administrative regulation affect the local government or any service it provides? See (2) above.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 9:010. Environmental health.

RELATES TO: KRS 211.920 to 211.945

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.925, EO 95-79

NECESSITY AND FUNCTION: KRS 211.920 to 211.945 authorizes the Cabinet for Health Services [~~Human Resources~~] to adopt rules, administrative regulations, and standards relating to the public health or health aspects of the operation of state confinement facilities. The intent of this administrative regulation is to establish uniform standards of institutional sanitation to safeguard the health of persons confined in state confinement facilities, by providing for the opportunity to pursue adequate personal hygiene for health maintenance, control of the incidence and spread of disease, and maintenance of sanitary living conditions. Executive Order 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.

Section 1. Definitions. As used in this administrative regulation:

(1) "Cabinet" means the Cabinet for Health Services and its designated agents [~~is as defined in KRS 211.920(1)~~];

(2) "Cell" means a room designated to provide sleeping and personal storage facilities for no more than two (2) inmates;

(3) "Confinement housing unit" means a residential structure intended for occupancy by inmates of a state confinement facility, which may be subdivided into wings, levels or sections containing inmate living areas. It may also include facilities for food preparation, service and dining, medical treatment, physical exercise, education, visitation, storage or other functions necessary for the operation and maintenance of the unit.

(4) "Dayroom" means a common area, room or other place of assembly within a confinement housing unit, or a wing, level, or section of that unit, which is provided for inmate leisure time activities;

(5) "Dormitory" means a room designated to provide sleeping and personal storage facilities for three (3) or more inmates;

(6) "Inmate" means any person confined or assigned to residence in a state confinement facility;

(7) "Inmate space" means the living area, as measured in gross square feet of floor space, required for each inmate within a confinement housing unit;

(8) "Living area" means the cell or dormitory to which an inmate is assigned for housing, and includes dayrooms, personal hygiene facilities, and other areas within a confinement housing unit which are normally accessible to an inmate on a daily basis. An area is considered normally accessible when an inmate can enter or use it

and includes areas accessible for specified hours or by permission only;

(9) "Personal hygiene facility" means a room or rooms which contain sanitary fixtures such as lavatories, water closets, showers or bathtubs, and other necessary appurtenances for maintaining inmate personal hygiene.

Section 2. Sanitary Facilities and Controls. (1) The water supply shall be potable, adequate and from an approved source and shall be developed and approved pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet.

(2) All sewage and liquid waste matter shall be disposed of into a public sewer system, if available. In the event a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed and operated pursuant to the requirements of the cabinet; if an adequate public sewer system subsequently becomes available, connections shall be made thereto and the state confinement facility's sewage disposal system shall be discontinued.

(3) A drinking fountain or a potable water service fixture with individual single service drinking cups shall be accessible to inmates in their living area pursuant to the requirements of the State Plumbing Code. The use of a common drinking vessel is prohibited.

(4) Each confinement housing unit shall include personal hygiene facilities within the unit which contain sanitary fixtures meeting the requirements of the State Plumbing Code as to design, fixture type and numbers of fixtures.

(5) All personal hygiene facilities shall be designed and constructed pursuant to the requirements of the State Building Code. All walls, floors, ceilings, partitions, sanitary fixtures and appurtenances shall be maintained in a sanitary condition and in good repair.

(6) An adequate supply of clean washcloths, towels and clothing, and toilet tissue, soap and similar personal hygiene articles shall be issued to each inmate as necessary to maintain hygiene.

(7) Hot and cold or tempered water shall be supplied to all lavatories, showers and bathtubs, and all hot or tempered water supply lines to such fixtures shall be protected by temperature and pressure control devices approved for use by the State Plumbing Code to prevent scalding.

(8) All plumbing shall comply with the State Plumbing Code.

(9) All garbage and rubbish shall, prior to disposal, be kept in leak-proof, nonabsorbent containers and the containers shall be kept covered with tight-fitting lids when stored. Containers shall be flame-retardant. Adequate cleaning facilities shall be provided and containers shall be kept clean. All garbage and rubbish shall be removed from confinement housing units on a daily basis and shall be disposed of at least weekly or more often if necessary, and in a manner approved by the Natural Resources and Environmental Protection Cabinet.

Section 3. Facilities and Equipment. (1) Each confinement housing unit shall provide a minimum inmate space of sixty (60) square feet for each inmate housed within that unit.

(2) Each cell and dormitory shall:

(a) Have at least eight (8) foot ceilings;

(b) Contain a bed for each inmate; and

(c) Provide facilities for storage of inmates' personal belongings, including clothing and towels.

(3) All floors, walls, ceilings, and equipment of confinement housing units shall be constructed pursuant to the State Building Code. All parts of the confinement housing unit and its premises shall be kept in good repair, clean, neat and free of litter and rubbish.

Section 4. Lighting. Each confinement housing unit shall be provided with natural or artificial light sufficient to provide twenty (20) foot candles of light for reading purposes, to permit observation, and for proper cleaning and maintenance. All light fixtures shall be kept in good repair and clean.

Section 5. Heating, Cooling and Ventilation. (1) All confinement housing units shall be provided with heating, cooling and ventilation equipment as required by the State Building Code. The equipment shall be capable of meeting the requirements of the State Fire Marshal for safety, maintenance and operation.

(2) Ventilation, through natural or mechanical means shall be sufficient to provide fresh air and remove disagreeable odors.

Section 6. Vermin Control. (1) Effective measures to control the presence of rodents, flies, roaches, and other vermin on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or breeding of vermin.

(2) Openings to the outside shall be protected against the entrance of rodents, insects and other vermin by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other acceptable means. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 7. Bedding. (1) As a minimum, each inmate in a state confinement facility shall be provided with:

(a) An approved flame-retardant and water-repellent mattress and pillow;

(b) A pillowcase;

(c) A sheet or cloth mattress cover; and

(d) A blanket.

(2) If, in the sound discretion of the appropriate person in charge of the state confinement facility, any items listed in this section would constitute a danger or hazard to the inmate confined due to a behavior or mental condition, such items may be withheld.

(3) Mattresses, pillows, blankets, sheets, pillowcases, and mattress covers shall be kept in good repair and clean.

(4) Sheets, pillow cases and mattress covers, if used without sheets, shall be changed and laundered at least weekly and before being issued to another inmate.

Section 8. Exercise. Adequate space shall be provided within the state confinement facility to allow all inmates an opportunity to obtain physical exercise.

Section 9. Food Service. All state confinement facilities shall comply with the food service provisions of KRS 219.011 to 219.081 and 219.991 and the State Food Service Code. If food for inmates is not prepared by the state confinement facility, food shall be obtained from a commercial food service establishment holding a valid permit from the cabinet.

Section 10. Food Manufacturing. All food manufacturing and processing conducted at state confinement facilities shall be operated pursuant to applicable public health laws and administrative regulations of the cabinet.

Section 11. Existing Facilities and Equipment. Notwithstanding the other provisions of this administrative regulation, facilities and equipment being used by existing state confinement facilities, which do not fully meet the design and construction requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and creates no health hazard.

Section 12. Plan Review of Construction. Plans for alteration or new construction of state confinement facilities shall be submitted to the appropriate agencies for approval.

Section 13. Inspection of State Confinement Facilities. (1) At least once each six (6) months, the cabinet shall inspect each state

confinement facility and shall make as many additional inspections and reinspections as are necessary for carrying out the provisions of this administrative regulation.

(2) When an agent of the cabinet makes an inspection of a state confinement facility, he shall record his findings on an official cabinet inspection report form and provide the supervising and maintaining authorities with a copy of the report. If a deficiency is found, the inspection report shall:

(a) Set forth the specific deficiencies found;

(b) Identify any variances previously granted;

(c) Establish a specific and reasonable period of time for the correction of the deficiency found; and

(d) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in the initiation of legal action.

Section 14. Enforcement Hearings. For purposes of enforcement, whenever the supervising and maintaining authorities have failed to comply with any written notice or order issued under the provisions of this administrative regulation, they shall be notified in writing that legal action may be instituted against the state confinement facility, and the supervising and maintaining authorities, at the end of ten (10) working days following service of the notice, unless a written request for a hearing is filed with the cabinet, by the supervising and maintaining authorities, within the ten (10) working day period. All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

[~~(1) The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it.~~

~~(2) At the conclusion of the hearing, the hearing officer shall make written findings of fact, conclusion(s) of law, and recommendations, based upon the evidence presented and any matters considered by the hearing officer, pursuant to the Confinement Facilities Health Act and these administrative regulations. The hearing officer may recommend that a variance be granted or denied, and that legal action be pursued.~~

~~(3) The secretary of the cabinet or his designee may accept, reject or modify the findings, conclusion(s) and recommendation(s) of the hearing officer. A variance may only be granted upon written determination that the granting thereof will not endanger the health of those confined in the facility or the public health. Any variance so granted may be with or without stipulations or restrictions.~~]

Section 15. Variance Hearings. (1) Any supervising and maintaining authority of a state confinement facility may request in writing that the cabinet consider granting a variance to any provision of this administrative regulation.

(2) Written requests for a variance shall include all pertinent information about the facility, the specific provision(s) of the administrative regulation affected, the specific reason(s) for the request and evidence in support of the request.

(3) Upon receipt of a request for a variance, the cabinet shall review the request and establish a date, time and location for the convening of an administrative hearing. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. The requesting authority shall be notified of the date, time and location of the hearing within ten (10) working days of the receipt of the request, and at least five (5) working days prior to the date of the hearing.

(4) [~~Supervising and maintaining authorities requesting variances shall have the right to appear at the hearing with counsel and to present evidence in support of the variance request, including testimony of expert witnesses.~~

~~(5) At the conclusion of the hearing, the hearing officer shall make written findings of fact, conclusion(s) of law, and recommendations based upon the evidence presented and any matters considered by the hearing officer, pursuant to the Confinement Facilities Health Act and these administrative regulations.~~] The hearing officer may recommend that a variance be granted or denied, and that legal action be pursued.

[~~(6) The secretary of the cabinet or his designee may accept, reject or modify the findings, conclusion(s), and recommendation(s) of the hearing officer.~~]

(5) A variance may only be granted upon written determination that the granting thereof will not endanger the health of those confined in the facility or the public health. Any variance so granted may be with or without stipulations or restrictions.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 20 state confinement facilities statewide.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to an existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment of an existing administrative regulation.

(5) Source if revenue to be used for implementation and enforce-

ment of administrative regulation: This administrative regulation will continue to exist on 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: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 211.180.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to an existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health department and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. Environmental personnel act as agents to the cabinet and perform the inspection duties mandated by KRS 211.925 and this proposed amended regulation.

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.

2. State compliance standards. None exists.

3. Minimum or uniform standards contained in the federal mandate. None exists.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 10:020. Frozen food locker plants.

RELATES TO: KRS Chapter 221

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS Chapter 221 authorizes the Cabinet for Health Services [~~Human Resources~~] to regulate frozen food locker plants. The purpose of this administrative regulation is to provide uniform requirements for the administrative regulation of frozen food locker plants. Executive Order 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.

Section 1. Plan Review of Future Construction. No person shall construct, remodel or extensively alter any frozen food locker plant until the plans and specifications have first been submitted to the local health department, and approved in writing.

Section 2. Display of Licenses. Frozen food locker plant licenses issued by the cabinet shall be displayed in a conspicuous place in the plant.

Section 3. Construction Requirements. (1) Walls, ceilings and floors.

(a) Side walls and ceilings of every frozen food locker plant shall be constructed of smooth surfaces and kept clean.

(b) Each building, room or enclosure used for the preparation, manufacture, packing, storage, freezing, sale or distribution of food shall have an impermeable floor that can be flushed and washed clean with water.

(2) Ventilation. All frozen food locker plants shall be adequately ventilated excluding areas devoted exclusively to refrigeration.

(3) Lighting.

(a) All working surfaces shall be provided with at least twenty (20) foot-candles of artificial light.

(b) Storage rooms including those under refrigeration shall have at least ten (10) foot-candles of artificial light, measured at a distance of thirty (30) inches from the floor.

(c) Light fixtures in rooms under refrigeration shall be provided with vapor-proof globes.

(4) Water supply. All frozen food locker plants shall be supplied with adequate hot and cold running water under pressure from a source approved by the Natural Resources and Environmental Protection Cabinet pursuant to administrative regulations 401 KAR Chapter 8.

(5) Lavatory and toilet facilities.

(a) Adequate, conveniently located, lavatory and toilet facilities shall be provided for employees.

(b) Toilet facilities including rooms and fixtures shall be kept in a clean condition and in good repair.

(c) Toilet tissue, cleansers, single service towels or hand drying devices and covered waste receptacles shall be provided.

(6) Construction of utensils and equipment. Utensils and equipment used in the processing of food shall be nontoxic, constructed to be easily cleanable, and kept in good repair. Utensils containing or plated with cadmium or lead shall not be used.

(7) Cleaning and bactericidal treatment. Utensils and equipment shall be subjected to cleaning and bactericidal treatment.

(8) Plumbing. All plumbing shall be installed in accordance with the state Plumbing Code, KRS Chapter 318.

(9) Waste disposal. Garbage, trash, sewage and other wastes

shall be disposed of in an approved manner.

Section 4. Refrigeration Controls. (1) The refrigeration system for a frozen food locker plant shall be equipped with:

(a) Accurate and automatic controls of adequate capacity to provide under extreme conditions of outside temperatures and under peak load conditions for the maintenance of uniform safe temperatures in refrigerated rooms.

(b) Accurate self-recording or self-registering thermometer shall be provided in the locker room.

(c) Temperature records of thermometers shall be kept at the plant and shall be preserved for at least one (1) year from the date of the recording. The thermometer in the locker room shall be placed in a position where it may be readily observed by the patrons.

(2) Recording thermometers shall:

(a) Continually record temperatures in plants for a period of not less than seven (7) days;

(b) Be enclosed in moisture-proof cases, permanently fastened to a substantial wall in the vestibule or waiting room; and

(c) Be installed in a manner as to be visible at all times.

(3) Recording instrument shall be kept locked at all times except if changing recording dials or charts, inking, or repairing. Charts shall:

(a) Be changed once each week;

(b) Be properly dated so as to indicate the period for which temperatures were recorded;

(c) Be signed by the operators; and

(d) Be made available for inspection for at least one (1) year.

(4) The sensitive bulb used to determine temperatures shall be located in the locker room and installed to insure efficient and proper operation at all times. The bulb shall not be placed directly in front of any door or blower.

(5) If more than one (1) room or one (1) section of lockers is maintained in a frozen food plant, which rooms or sections of lockers are refrigerated independently of each other, a sensitive bulb properly connected to an accurate recording thermometer shall be installed in each room or section of lockers to provide accurate recordings or temperatures in each room or section of lockers.

Section 5. Storage and Handling of Food. (1) Food shall not be placed in a locker for storage unless it has been inspected by the operator and sharp-frozen for preservation so rapidly that ice crystals formed are too small to rupture the cells and natural juices and flavor are preserved.

(2) The lockers in any plant shall be constructed to protect the contents from contamination, or deterioration Lockers with perforated bottoms shall be provided with a suitable unperforated liner or tray.

(3) All meats to be frozen or stored shall be wrapped in paper or other material which meets the requirements of the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart B, Substances for Use Only as Components of Paper and Paperboard which is incorporated by reference. Copies may be examined at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. All fruits and vegetables shall be wrapped or packed before they are placed in a locker. Each wrapped portion shall be marked or stamped with the correct locker number and the date of wrapping.

(4) Fresh carcass meats shall be identified with a suitable tag or stamp. Meats that are not clean shall be washed with cold water and cleaned or rejected. If accepted, the carcass shall be placed in the chill room, long enough to lose body heat.

(5) In applying marks directly to meats or other food products, the operator shall use only nontoxic ink or other harmless substances.

(6) Before being frozen, vegetables shall be cleaned, and packed in containers for freezing.

(7) Before being frozen, fruit shall be cleaned and packed in containers for freezing.

(8) All fish shall be promptly washed with clean water, wrapped, frozen and marked with the date and the locker number.

(9) Foods not intended for human consumption, shall be stored in a room or locker specifically set apart for that purpose. Nonconsumable foods shall not be stored in the chill room, aging room, sharp-freeze room or locker room of any frozen food locker plant where foods intended for human consumption are stored.

(10) Patrons shall not be permitted to handle meats or foods, other than their own which are stored in the chill room, or are in the process of preparation or freezing for storage.

(11) Foods stored shall be protected from filth, flies, dust, dirt, insects, vermin and other contamination. No food shall be stored in a manner as to cause deterioration of food in adjacent lockers.

(12) If refrigeration coils or plates are located directly above a patron's locker, they shall be defrosted so that contents of the locker are not contaminated.

(13) Patrons renting lockers, who are directly or indirectly engaged in the selling of food, shall declare this fact to the operator, and suitable entry shall be made on the operator's record.

Section 6. Employee Health and Cleanliness. (1) Frozen food locker plant operators shall not permit any person who has a communicable disease or is a carrier of a communicable disease, or who is suffering from any infected wound, to work in any physical contact with food in a frozen food locker plant or a branch frozen food locker plant.

(2) Every person employed in a frozen food locker plant and engaged in direct physical contact with the food during its preparation, processing or storage, shall be clean in person and wear clean washable outer garments and suitable head coverings, which are to be used only for that purpose.

Section 7. Miscellaneous Requirements. (1) All frozen food locker plants shall be provided with adequate lockers or dressing rooms for employees separate and apart from any room in which food is prepared, processed, chilled, frozen or stored.

(2) Tobacco shall not be used in any room where food is processed or stored.

(3) No room used for the preparation, processing, storage, display or sale of foods shall be used as a living or sleeping room.

(4) No dogs, cats or other animals shall be permitted in a frozen food locker plant.

(5) Any plant using a toxic gas refrigerant shall have at least one (1) gas mask of a type approved by the National Institute of Occupational Safety and Health and shall have the gas mask placed where it will be readily accessible.

Section 8. Enforcement Procedures. (1) The frozen food locker license shall be suspended immediately upon notice to the holder without a hearing if the local health department has reason to believe that an imminent health hazard exists. In this event, the permit holder may request a hearing. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~If requested a hearing shall be granted within seven (7) days of receipt of request.~~]

(2) In all other instances of violation of the provisions of this administrative regulation the local health department shall serve the holder of the frozen food locker license a written notice specifying the violations and afford the license holder a reasonable opportunity to correct same.

(3) If a frozen food locker license holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the license.

(4) The holder of the frozen food locker license shall be notified in writing that the license shall be suspended at the end of ten (10) days following service of the notice unless a request for a hearing is filed in accordance with 902 KAR 1:400. [~~made to the local health department within the ten (10) day period.~~]

(5) Any person whose license has been suspended may make a request in writing for reinstatement of the license.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager
(1) Type and number of entities affected: Four
(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: None 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: None 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 increase.
2. Second and subsequent years: No increase.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect cost or savings: No change.
1. First year: No change.
2. Continuing cost or savings: No change.
3. Additional factors increasing or decreasing costs: No change.
(b) Reporting and paperwork requirements: No change.
(4) Assessment of anticipated effect on state and local revenues: No change.
(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from permits to operate.
(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 received.
(b) Kentucky: None received.
(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.
(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.
(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: None
(10) Any additional information or comments: None
(11) TIERING: Is tiering applied? No. Tiering was not applied due to the number of facilities, the size of the facilities, and the generic operations of the facilities.

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. Local health department environmentalists carry out the provisions of this administrative regulation.
3. State the aspect or service of local government to which this administrative regulation relates. Local health departments, environmental health programs. Local health department environmentalists carry out the environmental health programs.
4. How does this administrative regulation affect the local government or any service it provides? Local health department environmentalists conduct surveillance and enforcement activities of all environmental health programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
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 Environmental Health and Community Safety
(Amendment)

902 KAR 10:030. Sanitarians.

RELATES TO: KRS 223.010 to 223.080, 223.990
STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, HB 799, Part I, G., 56., d. (1990 Acts, Chapter 514, pp. 1734-1735, 1736) "Budget Modification Report, Human Resources"; Final Budget Memorandum, Volume II, Page 288 (April 13, 1990), EO 95-79
NECESSITY AND FUNCTION: KRS 223.010 to 223.080, and 223.990 authorize the Cabinet for Health Services [~~Human Resources~~] to establish minimum standards and qualifications for registered sanitarians. This administrative regulation provides uniform standards for registered sanitarians and procedures for processing applications and to establish fees for examination and registration. Executive Order 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.

Section 1. Definitions. As used in this administrative regulation: "Contact hour" means a unit of measure for approved instruction by

Registered Sanitarian Examining Committee. This unit is determined to equal actual classroom hours. Units of measure may be in half hour increments.

Section 2. Minimum Standards and Qualifications. In addition to the specific requirements provided by KRS 223.030, an applicant for registration as a sanitarian shall have graduated from an accredited college or university with a baccalaureate or higher degree, which shall include satisfactory completion of at least twenty-seven (27) quarter hours, or eighteen (18) semester hours, of academic training in the basic physical, chemical, biological, or sanitary sciences.

Section 3. Applications for Registration. Applications for registration as a registered sanitarian shall be submitted to the committee on the application forms for registration as a registered sanitarian as provided by KRS Chapter 223 revised 7/90. This form is incorporated by reference and may be viewed or obtained at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. Each application fee shall be remitted by a Post Office or express money order, bank draft, or check payable to the order of the Kentucky State Treasury. The committee may correspond with any references given on the applicant's application and may also contact any former employer of the applicant concerning his prior service in the field of public health sanitation.

Section 4. Examinations. The committee shall conduct examinations at least once a year at such time and place as it may deem expedient. The examination may be either oral, written, or both. A fee of thirty (30) dollars shall accompany the application for examination. All registration certificates issued under the provisions of this administrative regulation shall expire June 30 following date of issue, unless renewed by the payment of a twelve (12) dollar registration fee.

Section 5. Certificates of Registration. After the committee has approved an application and all the requirements provided by law are fulfilled, the committee shall certify such fact to the secretary, who in turn shall issue a small card to the approved applicant certifying that he holds a certificate of registration. The committee shall assign serial numbers to each certificate of registration.

Section 6. Renewals. It shall be the duty of the secretary-treasurer of the committee to notify all registered sanitarians at least thirty (30) days prior to the expiration date of their certificate that they renew their certificate of registration as provided by law. Effective July 1, 1992 before renewal of registration can be issued the registrant must submit evidence of having completed ten (10) contact hours approved by the committee.

Section 7. Revocation of Certificates of Registration. In any action involving the revocation of a certificate of registration, the committee shall refer the matter to the secretary. The committee is authorized to set the time and place of a hearing. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~and the respondent shall be given at least thirty (30) days prior notice. At the conclusion of the hearing, the committee shall make a recommendation to the secretary in writing. The secretary is authorized to affirm, reverse, cancel, or modify the recommendation of the committee.~~]

Section 8. Expenditure of Funds. Expenditures for examinations, clerical expenses, training and reference materials, including approved home study courses, and for affiliation with any national sanitarian registration organization, may be made out of the trust and agency fund created by KRS 223.050.

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected:

(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: 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: None

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:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky: N/A

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

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

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

(10) Any additional information or comments: This change implements the administrative hearing clause to the regulation.

(11) TIERING: Is tiering applied? No. Tiering was applied as the fee is for annual renewal of registration for each individual registered.

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. None

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. No

2. State compliance standards. Yes

3. Minimum or uniform standards contained in the federal mandate. No

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 10:040. Kentucky youth camps.

RELATES TO: KRS 211.180

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090(3), EO 95-79

NECESSITY AND FUNCTION: KRS 211.180 authorizes the Cabinet for Health Services [~~Human Resources~~] to regulate certain public health matters including the sanitation of public and semipublic recreational areas; the detection, prevention and control of communicable disease and health hazards; and to provide for the protection and improvement of the health of school age children. This administrative regulation establishes uniform standards for youth camps necessary to insure a safe and sanitary environment to protect the health and safety of children attending camps in this state. Executive Order 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.

Section 1. Definitions. As used in this administrative regulation the following definitions shall apply:

(1) "Approved" means that which is acceptable to the cabinet.

(2) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~] and its designated agents.

(3) "Camp" or "youth camp" means any area, parcel, or tract of land, under the control of any person on which facilities are established, maintained or operated for recreational, educational, or vacation purposes for five (5) or more children, either free of charge, or for payment of a fee.

(a) This definition includes the following types of camps:

1. "Day camp" means a camp operated for all or part of the day, but does not include overnight lodging of campers;

2. "Primitive or outpost camp" means a portion of the residential camp premises or other site under control of the camp operator which is intended only for occasional use as an overnight tent camping site, and has no permanent structures or facilities; and

3. "Residential camp" means a camp operated on a permanent campsite with overnight lodging facilities.

(b) This definition shall not include the following:

1. Developed or primitive camps or campsites open to the general public on public lands, except that use of these sites or areas for operation of a youth camp shall be included in this definition;

2. Camps, campsites, or camping sessions operated solely for family or adult camping;

3. Privately owned camps or campsites intended for the sole use of the owner, their family and invited guests;

4. Day care or similar facilities which are operated with the intent to provide child care on a routine basis for infant, toddler, preschool, or school age groups individually or collectively, during parents' working hours, before or after school or during school vacation periods;

5. Weekend or similar overnight troop or trip camping activities conducted by organized youth troops or associations of less than seventy-two (72) hours duration, and not a part of an established youth camp operating session.

(4) "Camper" means any child under eighteen (18) years of age living apart from, or with the intention of living apart from, his relatives, parents, or legal guardians, while attending a youth camp.

(5) "Camp director" means the individual agent of the camp operator on the premises of any youth camp who has the primary responsibility for the administration, operation and supervision of the camp and its staff.

(6) "Camp operator" means the person that owns, a youth camp, whether the camp is operated for profit or not for profit.

(7) "Permanent structure" means any building and appurtenances owned or operated by the camp management for living, dining, kitchen, sleeping, toilet, bathing, shelter, tool shed, storage, assembly, infirmary, or stabling purposes, constructed to be immobile and permanent.

(8) "Permit" means a written document issued by the cabinet giving a designated person permission to operate a specific camp.

(9) "Person" means any individual, firm, partnership, company, corporation, organization, trustee, association, or any public or private entity.

(10) "Semipermanent structure" means any building, tent, structure or trailer and appurtenances owned or operated by the camp management for sleeping, living, dining, toilet, bathing, kitchen, tool shed, storage, assembly, infirmary, or animal sheltering purposes, constructed to be movable, may be easily disassembled, and not permanent in nature.

Section 2. Permits. No person shall operate a youth camp within the Commonwealth of Kentucky without possession of a valid permit issued by the cabinet. Only a person who complies with the requirements of this administrative regulation shall be entitled to receive and retain a permit. Permits shall not be transferable from one person to another person or place. The permit shall be posted or readily available at every camp. Each permit shall expire on December 31 next following its date of issuance.

Section 3. Application for a Permit. (1) Any person desiring to operate a camp shall make written application on form DFS-233 - Application to Operate, provided by the cabinet. The application shall include:

(a) Applicant's full name and address and indicate whether the applicant is an individual, firm or corporation;

(b) If a partnership, the names of the partners, and their addresses;

(c) The location of the camp;

(d) The type of camp; and

(e) The signature of the applicant or applicants.

(2) Upon receipt of an application, the cabinet shall make an inspection of the camp to determine compliance with the provisions of this administrative regulation. If inspection discloses that the

applicable requirements of this administrative regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. Camp Site. The camp site shall be located on land that provides good natural drainage. The area on which the tents, buildings, or structures are erected, together with other areas frequently used for camp activities, shall be well drained and not located in a swamp or similar place in which mosquitoes may breed.

Section 5. Camp Facilities. (1) All camp structures used for human occupancy or assembly, and all electrical, heating, ventilating, air conditioning, plumbing and lighting systems in those structures shall be designed and constructed pursuant to the State Building Code, except for tents, which shall meet federal flammability standards.

(2) All camp food preparation and service facilities shall comply with the provisions of KRS 219.011 to 219.081 and 219.991 and the State Food Service Code. If food for campers and staff is not prepared by the camp, food shall be obtained from a commercial food service establishment holding a valid permit from the cabinet.

(3) Floors, walls, ceilings, and attached or freestanding appurtenances, fixtures and equipment in all permanent and semipermanent structures shall be kept clean and in good repair.

(4) All gas or oil burning heating and cooking facilities used in any camp shall meet applicable state fire codes for installation, operation and maintenance.

Section 6. Sleeping Facilities. (1) A minimum of thirty (30) square feet of floor space shall be provided for each camper in all structures used for sleeping purposes.

(2) All structures used as sleeping quarters shall be designed to provide a minimum of two (2) feet separation between beds, cots, or sleeping bags on all sides. Beds, cots, or sleeping bags shall be placed so that the heads of campers are at least six (6) feet apart, and if double decked beds are used, there shall be not less than twenty-seven (27) inches of separation between the lower mattress and the bottom of the upper bed.

(3) Mattresses shall be covered in materials which are water repellent, easily cleanable and meet federal flammability standards, or shall be encased in a separate mattress cover which meets these requirements. Each occupied bed or cot shall be provided with one (1) sheet, one (1) pillow, one (1) pillowcase, and one (1) blanket either by the camp, or by the individual camper; except that this requirement shall not apply if a camper provides his own sleeping bag.

(4) All articles of bedding provided by the camp shall be kept clean and in good repair. Linen shall be changed at least once weekly and more often if necessary, or if there is a new camper occupying the bed or cot.

Section 7. Personal Hygiene Facilities. (1) Each residential or day camp shall provide personal hygiene facilities consisting of water closets, hand-washing and shower facilities for each sex accommodated, pursuant to the design, construction and sanitary fixture requirements of the State Plumbing Code.

(2) Personal hygiene facilities shall have natural and artificial lighting of at least twenty (20) foot-candles.

(3) Personal hygiene facilities shall be located no more than 500 feet from any permanent or semipermanent structure or tent used for human occupancy or assembly.

(4) Hot and cold or tempered water service shall be provided to all lavatories and showers, and approved temperature limited devices meeting State Plumbing Code requirements shall be used to prevent delivery of water at a temperature that could scald a camper; except that existing camps will not be required to furnish hot or tempered water at existing lavatories or showers.

(5) Lavatories or hand-washing facilities shall be conveniently located to all toilet facilities. Water, hand-cleansing soap, and approved sanitary towels or other approved hand-drying device shall be provided at all lavatories and hand-washing facilities.

(6) All personal hygiene facilities shall be maintained in good repair and shall be kept clean at all times.

(7) Adequate toilet tissue shall be provided at each toilet facility.

(8) Flame retardant, easily cleanable refuse containers shall be provided in all toilet facilities and shall be covered in toilets for females.

Section 8. Sewage and Waste Water Disposal. All sewage and waste water shall be disposed of into a public sewer system, if available. In the event a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed and operated pursuant to the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet; if a public sewer system subsequently becomes available, connections shall be made to it and the camp sewer system shall be discontinued.

Section 9. Water Supply System. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. If a public water supply of a municipality or water district is not available, the supply for the camp shall be developed and approved pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet; if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the camp supply shall be discontinued.

(2) Adequate drinking fountains meeting State Plumbing Code requirements or portable drinking water containers of an approved type shall be used within the camp. Common drinking cups, glasses or vessels are prohibited.

(3) If portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and designed so that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition.

(4) All ice used shall be from an approved source and shall be handled and stored in a manner to prevent contamination. If ice is made on the premises of any camp, the ice-making machine shall be of approved construction and the water shall be of the same bacteriological quality as approved drinking water.

Section 10. Refuse Handling. (1) The storage, collection and disposal of refuse shall be conducted to not create a health hazard, rodent harborage, insect breeding area, accident or fire hazard, or air pollution violation and shall conform to all other requirements of the Natural Resources and Environmental Protection Cabinet.

(2) All refuse shall be stored in flytight, watertight, rodent proof containers and containers shall be emptied and cleaned at a frequency necessary to prevent a nuisance.

(3) Approved container storage shall be provided and shall be designed and maintained to not create a nuisance.

(4) All refuse containing garbage shall be collected at least once per week or more often if deemed necessary.

Section 11. Maintenance of Animal Facilities. (1) Barns, stables, corrals or other structures used to house horses and other animals shall be located at least 500 feet from any sleeping, eating or food preparation area. Tie-rails, or hitching posts shall not be located within 200 feet of any dining hall, kitchen or other place where food is prepared, cooked or served.

(2) Barns, stables and corrals shall be located on a well- drained sloping area and situated to prevent contamination of any water supply.

(3) Manure shall be removed from barns, stalls, and corrals as often as necessary to prevent a fly problem. Fly repellents or other

precautions shall be used to prevent these shelters from becoming an attractant for or breeding place for flies. Manure disposal shall be handled in a manner which does not create a nuisance or contaminate surface or groundwater.

Section 12. Swimming Facilities and Recreational Water Activities. (1) All swimming pools, beaches, and natural bathing places shall comply with 902 KAR 10:120, the Kentucky public swimming and bathing facility administrative regulation.

(2) All small craft and boating activities shall be conducted in compliance with applicable rules and administrative regulations of the Natural Resources and Environmental Protection Cabinet, Division of Water Patrol.

(3) All swimming and small craft and boating activities shall be under the supervision of a person holding a current American Red Cross Senior Life Saving Certificate or its equivalent at all times.

Section 13. Insect, Rodent and Pest Control. (1) Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestations. Extermination methods and other measures to control insects and rodents shall be pursuant to applicable state laws and administrative regulations.

(2) Camps shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes or other pests.

(3) Storage areas shall be maintained to prevent rodent harborage. Lumber, pipe and other building materials shall be stored at least one (1) foot above the ground.

Section 14. Camp Director, Records and Reports, Medical Supervision and First Aid. (1) The camp operator shall assure that a camp director or an authorized agent is available within the camp boundaries at all times while the camp is in operation.

(2) Records or personal data, including a medical history, shall be kept on each person attending a camp. Minimum records shall include the name, date of birth, and address of each person in camp; the name, address and telephone number of parents or guardians; and the medical history, and dates of admission and discharge of each camper.

(3) Residential camps shall have facilities for isolation of persons suspected of having a communicable disease. Other camps shall provide for the immediate isolation of campers suspected of having a communicable disease.

(4) Adequate first aid supplies and equipment as designated by the physician on call shall be located within the camp. Residential camps shall have a person holding an American Red Cross Standard First Aid and Personal Safety Certificate or its equivalent on site twenty-four (24) hours a day while the camp is in session. All other camps shall have a person holding, as a minimum, a First Aid Course Certificate from the American Red Cross or its equivalent on site while camp is in session. The certificates shall be made available for examination upon request of an authorized agent of the cabinet.

(5) All prescription drugs shall be kept in a locked cabinet or container.

(6) A nearby physician or emergency room shall be available or on call for medical emergencies and the camp shall have access to a telephone, with emergency telephone numbers posted. Transportation shall be available at all times in the event of an emergency.

(7) All serious illnesses and accidents resulting in death or injury, other than minor injuries which require only first aid treatment and which do not involve medical treatment, shall be reported to the cabinet at the end of the camping season, but not later than December 31 of each year, on form DFS-309 - KY Youth Camp Accident/Illness Report provided by the cabinet.

Section 15. Safety and Accident Prevention. (1) All camps shall comply with applicable rules and administrative regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply and fuel connections.

(2) In every camp with an electrical system, the wiring, fixtures, and equipment shall be installed and maintained pursuant to applicable codes and administrative regulations.

(3) Protection; natural hazards.

(a) Natural hazards within the boundaries of the camp shall be plainly marked and measures and procedures approved by the cabinet shall be followed to insure the safety of the campers.

(b) Poison plants such as poison sumac and poison ivy shall be subject to control and elimination from areas where their presence is hazardous to campers.

(4) Elimination of artificial hazards.

(a) All buildings, grounds and equipment shall be maintained in a manner to eliminate or minimize the danger from holes, glass, splinters, sharp projections and other hazardous conditions to protect the safety of all persons residing in or using the facilities at the camp site.

(b) All insecticides, pesticides and chemical poisons shall be plainly labeled and stored in a safe place.

(c) Gasoline and other highly flammable fluids shall be plainly marked and stored in a locked container or building not occupied by residents of the camp and at a safe distance from sleeping quarters or buildings where people congregate.

Section 16. Plan Review for Future Construction. (1) Any person contemplating construction, alteration, addition to or change in the construction of any permanent camp shall, prior to the initiation of any such construction, submit plans in triplicate, through the local health department concerned, of any proposed camp, additions, alterations, or change in construction which shall show:

(a) Name and address of owner or operator of camp;

(b) Area and dimension of the site;

(c) Property lines;

(d) A separate floor plan of all buildings and other improvements constructed or to be constructed including location and number of personal hygiene facilities, including water closets, urinals, showers, hand-washing facilities and including a plumbing riser diagram;

(e) Detail drawings of sewage disposal facilities including written specifications;

(f) Detail drawings of water supply if source is other than public; and

(g) The location and size of water and sewer lines within the camp.

(2) If central food preparation and food service buildings are to be provided, plans and specifications shall be submitted showing the kitchen floor plan, layout and type of equipment, storage area, restrooms, and dining area pursuant to 902 KAR 45:005, the state food service code.

(3) If artificially constructed swimming pools or beaches are contemplated, plans and specifications shall be submitted to the cabinet for review and approval prior to construction.

Section 17. Inspection of Camp. (1) Each camping season an inspection shall be made by the cabinet on each camp at least once prior to the opening of the camp and at least once while the camp is in actual operation. The cabinet shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If an agent of the cabinet makes an inspection of a camp he shall record his findings on an official cabinet inspection report form DFS-308 - Youth Camp Inspection and provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth any violation(s) if found;

(b) Establish a specific and reasonable period of time for the correction of the violations(s) found; and

(c) State that failure to comply with any notice issued pursuant to

the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 18. Suspension of Permit. (1) If the cabinet has reason to believe that an imminent public health hazard exists, or if the permit holder has interfered with the authorized agents of the cabinet in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing on form DFS-212 - Request for Hearing. The permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct them. If a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of five (5) days following service of the notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within the five (5) day period.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this administrative regulation shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing need not be made unless the interested party assumes the cost and a request is made at the time a hearing is requested.~~]

Section 19. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection on form DFS-215 - Application for Reinstatement of Suspended Permits for the purpose of reinstatement of the permit. Within five (5) days following receipt of written request, including a statement signed by the applicant that in his opinion the conditions causing the suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 20. Revocation of Permits. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400. [~~by the cabinet.~~] Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for a hearing is filed with the cabinet, in accordance with 902 KAR 1:400, by the permit holder, within the ten (10) day period.

Section 21. Existing Facilities and Equipment. Notwithstanding the other provisions of this administrative regulation, facilities and equipment being used by existing youth camps holding valid permits on the effective date of this administrative regulation, which do not fully meet the design and construction requirements of the administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 14, 1996 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 200 permitted youth camps statewide.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on 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: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase

efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 211.180.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health department and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. Environmental personnel act as agents to the cabinet and perform the execution of programs mandated by KRS 194.050 and this proposed amended regulation.

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.

2. State compliance standards. None exists.

3. Minimum or uniform standards contained in the federal mandate. None exists.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 10:045. Tattoo artist registration, tattoo studio certification and inspection.

RELATES TO: KRS Chapter 211, 211.760, 211.990

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, Chapter 211, 211.760, EO 95-79

NECESSITY AND FUNCTION: KRS 211.760 requires persons who engage in or carry on any business of tattooing humans to register with local health departments and directs the Cabinet for Health Services [~~Human Resources~~] to promulgate administrative regulations relating to health and cleanliness of places of business, sterilization of tattooing apparatus, procedures to prevent the spread of disease and other administrative regulations as may be necessary to protect public health. The function of this administrative regulation is to set forth the standards required by KRS 211.760. Executive Order 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.

Section 1. Definitions. (1) "Adequate ventilation" shall mean a free and unrestricted circulation of fresh air throughout the tattoo studio and the expulsion of foul or stagnant air.

(2) "Minor" shall mean any person under the age of eighteen (18) years.

(3) "Studio certificate of sanitation" means the issuance of a document by the local health department to a tattoo studio certifying that said studio, after inspection, was found to be in compliance with the applicable provisions of this administrative regulation.

(4) "Tattoo" shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

(5) "Tattoo artist" means any person who engages in the business of tattooing.

(6) "Tattoo artist registration" means the issuance of a written instrument authorizing the person named therein to engage in the business of tattooing.

(7) "Tattoo operator" means any person who controls, operates, conducts or manages any tattoo studio, whether actually engaging in the business of tattooing or not.

(8) "Tattoo studio" shall mean any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.

(9) "Antibacterial solution" means any solution used to retard the growth of bacteria approved for application to human skin and includes all products so labeled.

(10) "Germicidal solution" means any solution which destroys germs, and is so labeled.

(11) "Sterilization" means holding in an autoclave for fifteen (15) minutes, at fifteen (15) pounds pressure, at a temperature of 250 degrees Fahrenheit or 121 degrees Celsius.

(12) "Sanitary" means clean and free of agents of infection or disease.

(13) "Sanitized" means effective bacterial treatment by a process that provides sufficient concentration of chemicals for enough time to reduce the bacteria count including pathogens to a safe level on equipment.

Section 2. Tattoo Artist Registration. (1) No person shall engage in the business of tattooing or act as a tattoo artist unless such person has registered as tattoo artist with the local health department in the district or county where the person is to engage in the business of tattooing.

(2) No holder of any studio certificate of sanitation issued under this administrative regulation shall allow a tattoo artist to engage in the business of tattooing unless the tattoo artist is a holder of a valid tattoo artist registration issued under subsection (1) of this section.

(3) Any person desiring to engage in the business of tattooing or act as a tattoo artist shall submit an application for a tattoo artist registration to the local health department in the district or county in which the person is to engage in the business of tattooing.

(4) A tattoo artist registration shall expire on December 31 of each year.

(5) All tattooing by a tattoo artist shall be under the auspices of a certified studio.

(6) A provisional tattoo artist registration may be issued for a period not to exceed fourteen (14) days. The holder of the studio certificate of sanitation shall apply for the provisional tattoo artist

registration and all tattooing performed by the holder of a provisional tattoo artist registration shall be under the auspices of the studio certificate of sanitation and in compliance with the provisions of this administrative regulation. A provisional tattoo artist registration is not transferable nor may it be renewed.

Section 3. Studio Certificate of Sanitation. (1) No person shall operate a tattoo studio unless the person has been registered and the studio has a certificate of sanitation issued by the local health department in the district or county in which the person is to engage in the business of tattooing.

(2) No studio certificate of sanitation shall be issued or renewed unless the studio has been inspected and found to be in compliance with the applicable provisions of this administrative regulation.

(3) The studio certificate of sanitation shall expire on December 31 of each year.

(4) Records of all studio certificates of sanitation shall be kept on file by the local health department in district or county in which tattooing is performed.

Section 4. Operation Procedures for Studios and Artists. (1) Sanitary procedures.

(a) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with warm running water, antibacterial soap, and individual hand brush that is clean and in good repair, then air blown or dried by single use towel prior to beginning work on each person or when interrupted in the process.

(b) Disposable, latex examination gloves shall be worn during the tattooing process. Gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, the gloves become torn or punctured, or whenever their ability to function as a barrier is compromised.

(2) Each tattoo artist shall wear a clean outer garment, apron, smock, T-shirt, etc.

(3) Tattoo artists who are experiencing symptoms of diarrhea, vomiting, fever, rash, productive cough, jaundice or draining (or open) skin infections, boils, impetigo or scabies shall refrain from tattooing activities.

(4) Only sterilized or single use, disposable razors shall be used to shave the area to be tattooed.

(5) Before placing the design on the patron's skin, the tattoo artist shall treat the skin area with an antibacterial solution.

(6) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, it shall be thoroughly cleaned and rinsed in a germicidal solution for at least twenty (20) minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use.

(7) If a paper stencil is used by a tattoo artist for transferring the design to the skin, it shall be single use and disposable.

(8) If the design is drawn directly onto the skin, it shall be applied with a single use article only.

(9) A registered tattoo artist or certified tattoo business may set up at fairs, festivals, expositions or any location other than a tattoo studio with the written approval of the local health department for a period not to exceed fourteen (14) days.

(10) Cabinets for the storage of instruments, dyes, pigments, single use articles, carbon, and stencils shall be provided for each tattoo artist and shall be maintained in a sanitary manner, which protects them from contamination.

(11) Bulk single use articles shall be commercially packaged and handled to protect them from contamination. Storage of single use articles shall not be in a toilet room or vestibule of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(12) Work tables and chairs or benches shall be provided for each tattoo artist.

(a) The surface of all work tables and chairs or benches shall be constructed of material which is smooth, light- colored, nonabsorbent, corrosive-resistant, and easily sanitized.

(b) Work tables and chairs or benches shall be sanitized with a germicidal solution after each tattoo application.

(c) Existing tattoo studios on the effective date of this administrative regulation shall be exempt from the required color of the work table.

(13) All materials applied to the human skin shall be from single use articles or transferred from bulk containers to single use containers and shall be disposed of after each use.

(14) No pets, except working dogs, guide dogs or security dogs from a certified trainer, shall be permitted in the studio.

(15) Records.

(a) For each patron, proper records of tattoos administered shall be maintained by the holder of a studio certificate.

(b) Records of each patron shall be prepared prior to any procedure being performed and shall include the patron's name and signature, address and age, the date tattooed, the design of the tattoo, its location on the patron's body, and the name of the tattoo artist who performed the work.

(c) Records shall be entered in ink or indelible pencil, shall be available at a reasonable time for examination by the local health department in the district or county where the tattoo is performed. The signature of the patron shall be on the record.

(d) Before tattoo administration, there shall be a discussion conducted with the patron on the risks involved in the tattoo requested, and its possible complications, which shall be entered in the record.

(e) Records required by this administrative regulation shall be kept on file for five (5) years by the holder of the studio certification for the studio in which the tattoo was performed.

(16) Consent.

(a) Written consent for tattooing of minors shall be obtained from one (1) parent or guardian.

(b) Records of the written consents shall be kept on file for five (5) years by the holder of the studio certification for the tattoo studio in which the tattoo was performed.

(c) The person receiving the tattoo shall attest to the fact that they are not intoxicated or under the influence of drugs or alcohol.

(17) Instructions.

(a) Printed instructions on the care of skin shall be given to each patron or customer after tattooing as a precaution to prevent infection.

(b) A copy of instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed.

(18) Dyes or pigments.

(a) In preparing dyes or pigments to be used by a tattoo artist, only nontoxic sterile materials shall be used. Single-use or individual portions of dyes or pigments in clean, sterilized individual containers or single-use containers shall be used for each patron.

(b) After tattooing, the remaining unused dye or pigment in the single-use or individual containers shall be discarded along with the container.

(c) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(19) Sterilization of needles.

(a) A set of individual, sterilized needles shall be used by a tattoo artist for each patron.

(b) To guard against a potential temptation to reuse single-service needles because of exhaustion of existing supplies, not less than twenty-four (24) sets per studio of sterilized needles and tubes shall be on hand for the entire day or night operation. Sterilized instruments shall be resterilized at intervals of no more than six (6) months from the date of the last sterilization.

(c) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(d) If used instruments are ultrasoniced prior to being placed in the used instrument container, they shall be ultrasoniced, and then rinsed under running hot water prior to being placed in the used instrument container.

(e) The ultrasonic unit shall be sanitized with a germicidal solution daily.

(f) If used instruments are not ultrasoniced prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap, and then sterilized by autoclaving.

(g) Nondisposable instruments including the needle tubes shall be sterilized and shall be handled as to prevent contamination. Instruments to be sterilized shall be sealed in bags specifically made for the purpose of autoclave sterilization, and include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents.

(h) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization shall be utilized during the autoclave sterilization process.

(i) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them.

(j) No rusty, defective or faulty instruments shall be kept in the studio.

(20) Aftercare of tattoo.

(a) The completed tattoo shall be washed with a single-use towel saturated with an antibacterial solution.

(b) After drying, antibacterial solution shall be applied from a collapsible metal or plastic tube and the entire area covered with a single-use covering, which may, in turn, be covered with gauze and fastened to the site with adhesive tape.

Section 5. Facilities and Equipment. (1) General physical environment.

(a) Tattoo studios shall have at least fifty (50) footcandles of light measured at the height of the work table.

(b) Tattoo studios shall have adequate ventilation.

(c) Walls and ceilings shall be smooth and easily cleaned. Walls and ceilings shall be painted a light color.

(d) The floor of the tattoo work room shall be impervious material. The floor shall be swept and wet mopped daily. Floors, walls or ceilings shall not be swept or cleaned while tattooing is in operation.

(e) Convenient, clean, and sanitary toilet and handwashing facilities shall be made accessible to customers.

(f) The building and equipment shall be maintained in a state of good repair at all times. The studio premises shall be kept clean, neat, and free of litter and rubbish.

(2) Work room.

(a) Each tattoo studio shall have a separate work room not used for any other purpose.

(b) Work rooms shall not be used as a corridor for access to other rooms.

(c) Patrons or customers shall be tattooed only in the work room.

(d) Work rooms shall be equipped with hot and cold running water, and one (1) sink or basin per artist operating at the same time.

(e) Sinks and basins shall be for the exclusive use of the tattoo artists for washing their hands and preparing customers for tattooing.

(f) Sinks shall be equipped with foot, wrist, or single lever action controls, soap, a germicidal solution, single use towels, and individual hand brushes clean and in good repair for each tattoo artist.

(g) Plumbing shall be in compliance with the State Plumbing Code under KRS Chapter 318.

(h) No person shall consume any food or drink in the work room.

(3) A registered tattoo business may set up at fairs, festivals, expositions or any location other than a tattoo studio with the written approval of the local health department for a period not to exceed fourteen (14) days.

Section 6. Disposal of Waste. Waste products shall be disposed of by the tattoo studio operators in the following manner:

(1) Needles, scalpels, razors or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant, closed containers immediately after use.

(2) Needles shall not be purposely bent or broken, or otherwise manipulated by hand.

(3) Containers of sharp wastes shall be sent to a facility where they are either incinerated or otherwise rendered nonhazardous.

(4) Disposable waste shall be placed in easily cleanable, closed containers provided with tight fitting lids, to prevent leakage or spillage.

(5) Waste containers shall be kept closed when not in use.

(6) Disposable waste shall be handled, stored, and disposed of to minimize direct exposure of personnel to waste materials.

(7) Disposable waste shall be sprayed with a ten (10) percent chlorine solution immediately following each tattoo application.

Section 7. Inspection Fee. (1) An inspection fee is required for cost of inspections conducted by the local health department to determine compliance with administrative regulations.

(2) An annual inspection fee of $100 shall be assessed for each tattoo studio pursuant to KRS 194.050.

Section 8. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction.

Section 9. Application for Registration of Artists, Certification of Studio, Inspection Form, and Tattoo Record Form. (1) Applications for registration as a tattoo artist shall be submitted to the local health department on application forms DFS-200, provided by the cabinet.

(2) Applications for certificate of sanitation shall be submitted to the local health department on application form DFS-303, provided by the cabinet.

(3) Inspections shall be conducted using inspection form DFS-342, provided by the cabinet.

(4) Each tattoo studio shall maintain the information indicated on the Tattoo Record, DFS-343.

(5) The application for registration, certification, and the inspection form are incorporated by reference and may be viewed or obtained at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

Section 10. Enforcement Procedures. (1) The artist registration and studio certificate of sanitation shall be suspended immediately upon notice to the holder without a hearing when the local health department has reason to believe that an imminent health hazard exists.

(2) In all other instances of violation of the provisions of this administrative regulation the local health department shall serve the registrant or certificate holder a written notice specifying the violations and afford the registrant or certificate holder a reasonable opportunity to correct same.

(a) Whenever a registrant or certificate holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the artist registration or studio certification.

(b) The holder of the artist registration or studio certificate of sanitation shall be notified in writing that the registration or certificate shall be suspended at the end of ten (10) days following service of notice unless a request for a hearing is filed in accordance with 902 KAR 1:400. [~~made to the local health department within the ten (10) day period.~~]

(c) Any person whose registration or certification has been suspended may make a request in writing for reinstatement of the registration or certification.

(d) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the local health department in the performance of its duties the artist registration or certificate of sanitation may be permanently revoked after an opportunity for a hearing has been provided.

(e) Any temporary tattoo studio violation must be corrected within twenty-four (24) hours. If violations are not corrected the studio certificate of sanitation shall be immediately suspended. A hearing may be requested by the holder of the certificate of sanitation after suspension ~~[which shall be granted as soon as practical]~~.

(3) Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: 55 tattoo studios; 45 tattoo artists.

(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: None 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: None 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 increase.
2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.
2. Continuing cost or savings: No change.
3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from registrations to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied. The tattoo artist registration fee is set by statute. The tattoo studio certification fee is set by administrative regulation and is not tiered due to the number of establishments and the generic operation of the establishments.

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. Local health department environmentalists carry out the provisions of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Local health departments, environmental health programs. Local health department environmentalists carry out the environmental health programs.

4. How does this administrative regulation affect the local government or any service it provides? Local health department environmentalists conduct surveillance and enforcement activities of all environmental health programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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 Environmental Health and Community Safety
(Amendment)

902 KAR 10:050. Refuse bins.

RELATES TO: KRS 211.025, 211.090, 211.180, 16 CFR Part 1301

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 211.090 and 211.180 authorize the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to all matters of public health for the prevention and control of health hazards. The purpose of this administrative regulation is to establish a standard for certain refuse bins, to prescribe testing conditions and procedures for refuse bins and to set forth procedures for structurally modifying unstable bins or those not complying with the standard. Because unstable refuse bins are a potential hazard to the health and well being of children and because the average life of a refuse bin is estimated to be from ten (10) to fifteen (15) years, standards are required to minimize the risk from injury of the product. Executive Order 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.

Section 1. Definitions. (1) "Refuse bin" means a metal receptacle having an internal volume one (1) cubic yard or greater, by actual measurement, which temporarily receives and holds refuse for ultimate disposal either by unloading into the body or loading hopper of a refuse collection vehicle or by other means.

(2) "Internal volume" means the actual volumetric capacity of the container. This shall not be required to correspond to the nominal size rating used by industry.

(3) "Tip over" means that a refuse bin begins to rotate forward about its forwardmost ground supports during the application of either test force described in Section 3 of this administrative regulation.

(4) "Unstable refuse bin" means a bin which has an actual internal volume of one (1) cubic yard or greater that may tip over if an external vertically downward force is applied to the bin in a position which most adversely affects stability.

(5) "Distributed in commerce" means to:

(a) Sell;

(b) Introduce or deliver for sale; or

(c) Hold or offer for sale or distribution.

(6) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~].

(7) "Risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(8) "Retrofitting" means the structural modification of a bin to make it stable.

Section 2. Test Conditions. A refuse bin distributed in commerce shall be subject to the required tests under the following conditions.

(1) The refuse bin shall be empty and have its lids or covers in a position which would most adversely affect the stability of the bin.

(2) The refuse bin shall be tested on a hard, flat surface. During testing, the bin shall not be tilted from level to increase its stability.

(3) Those refuse bins equipped with casters or wheels shall have the casters or wheels positioned in a position which would most adversely affect the stability of the bin and shall be chocked to prevent movement.

(4) The stability of the refuse bin shall be tested without dependence upon nonpermanent attachments or restraints.

(5) For purposes of enforcement, bins shall be tested by the cabinet in that position which most adversely affects their stability.

Section 3. Test Procedures. The following procedures shall apply to the testing of a refuse bin:

(1) The refuse bin shall be tested by applying forces as described below and in the order indicated:

(a) A horizontal force of seventy (70) pounds shall be applied to a point and in a direction most likely to cause tipping; and

(b) A vertically downward force of 191 pounds shall be applied to a point most likely to cause tipping.

(2) These forces shall be applied separately and the bin shall not tip over under the application of either action cited above.

Section 4. Modification of Unstable Bins. Bins that do not meet the requirements of the test procedures may be structurally retrofitted to comply with the provisions of this administrative regulation. Retrofitting may be accomplished in several ways including:

(1) Metallic extensions may be welded to the front of the sloping side, and the wheels may be moved forward on the extensions; or

(2) A permanent counter weight may be placed on the back of the bin. Retrofitting to stabilize refuse bins shall be of durable construction so as to last the useful life of the bin.

Section 5. Issuance and Service of Notice of Violations. (1) If test procedures described in Section 3 of this administrative regulation establish that the bin does not comply with the standards prescribed by this administrative regulation, the cabinet shall notify the owner in writing. The notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the violations;

(c) State that an opportunity for appeal from a notice of inspectional findings shall be provided if a written request for a hearing is filed with the cabinet within the period of time established in the notice for correction; and

(d) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~State that the owner may be represented by counsel during the course of the hearing and may cross-examine witnesses against the owner.~~]

(2)(a) Notices provided for under this administrative regulation shall be deemed to have been properly served if the written notification of findings has been:

1. Delivered personally to the owner of the bin or person in charge of the bin; or

2. Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge.

(b) A copy of the notice shall be filed with the records of the cabinet.

Section 6. Hearings. (1) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

(2) A hearing shall be conducted [~~by the cabinet at a time and place designated by it~~] if:

(a) Nonconforming bins are not brought into compliance with the applicable standards within the prescribed period of time; or

(b) An appeal from the findings of violations is requested by the owner or person in charge.

[~~(2) Based upon the record of the hearing, the cabinet shall make findings of fact and conclusions of law and a final decision on the appeal.~~

~~(3) A transcript of the hearing shall not be made unless requested by the interested party.~~]

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West,

Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 250 refuse bin owners, haulers, and distributors.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: No effects.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 211.180.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No effect.

3. State the aspect or service of local government to which this administrative regulation relates. No relation.

4. How does this administrative regulation affect the local government or any service it provides? No effect.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. CFR 16 Part 1301, Ban of Unstable Refuse Bins.

2. State compliance standards. Yes, testing requirements adopted by this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. Yes, test conditions and test procedures.

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. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 10:120. Kentucky public swimming and bathing facilities administrative regulation.

RELATES TO: KRS 211.180, 211.990(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090(3), HB 492 (1988 Acts), EO 95-79

NECESSITY AND FUNCTION: HB 492 (1988 Acts) directs the Cabinet for Health Services [~~Human Resources~~] to regulate the design and construction of water distribution and treatment systems for swimming pools. KRS 211.180 directs the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to public facilities, and their operation and maintenance in a safe, sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and other swimming or bathing facilities. The function of this administrative regulation is to assure the proper design and construction of new facilities as related to water distribution and treatment systems, and the proper operation and maintenance of all such facilities in a manner which will protect the public health. Executive Order 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.

Section 1. Citation of Administrative Regulation. This administrative regulation may be cited as the "Kentucky Public Swimming and Bathing Facilities Administrative Regulation."

Section 2. Definitions. As used in this administrative regulation the following terms shall have the meanings set forth below:

(1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction. "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Air induction system" means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).

(5) "Alkalinity or total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (p.p.m.).

(6) "Approved" means accepted or acceptable under the applicable specifications stated or cited in the administrative regulation or accepted as suitable for the proposed use by the State Building Code.

(7) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(8) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(9) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed un U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(10) "Bather" means any person using a public swimming and bathing facility, and adjoining deck or beach area for the purpose of therapy, relaxation, recreation, competitive water sports or events, or related activities.

(11) "Bather load" means the maximum number of persons which may use the swimming and bathing facility as defined in the State Building Code.

(12) "Body feed" means the continuous addition of controlled amounts of filter aid during the operation of a diatomite type filter to maintain a permeable filter cake. If added as a slurry, this may be referred to as a slurry feed.

(13) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~] and its authorized agents.

(14) "Cartridge" means a replaceable porous filter element which can be the depth type or the surface type:

(a) "Depth type cartridge" means a filter cartridge with media not less than three-fourths (3/4) inch (.18 cm) thick which relies on penetration of particulates into the media to achieve their removal and to provide adequate holding capacity for the cartridge; and

(b) "Surface type cartridge" means a filter cartridge with media less than three-fourths (3/4) inch (.18 cm) thick which relies on retention of particulates on the surface of the cartridge to achieve their removal.

(15) "Chemical feeder output rate" means the weight or volume of active ingredients delivered by a chemical feeder expressed in units of time.

(16) "Chemical feed rate indicator" means a mechanism which will produce reproducible results expressed in units of weight or volume of chemical per unit of time, or per unit of volume of water; the mechanism may be a direct reading instrument, or may require the use of a reference chart.

(17) "Circulation piping system" means the piping between the facility structure and the mechanical equipment.

(18) "Corrosion resistant" means capable of maintaining original surface characteristics under the prolonged influence of the environment in which it is used.

(19) "Design head" means the total head requirement of the circulation system at the design rate of flow.

(20) "Design rate of flow (design filter rate)" means the rate of flow in a system which is used for design calculation. (The volume of the facility in gallons divided by the number of minutes in the turnover time.)

(21) "Diving pool" means a pool designed and intended for use exclusively by divers.

(22) "Effective filter area" means:

(a) "Permanent media type" - the effective filter area is the cross-section area of the filter surface that is perpendicular to the flow direction;

(b) "Diatomaceous earth type" - the effective filter area of the septum is that part of the septum which will accept the full thickness of precoat and through which the design filter flow will be maintained during filtration; and

(c) "Cartridge filter" - the total effective filter area is that cartridge area which is exposed to the direct flow of water. This excludes cartridge ends, seals, supports, and other areas where flow is impaired.

(23) "Factor of safety" means the ultimate load divided by the safe load or the ultimate strength divided by the allowable stress.

(24) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance (a filter media or element):

(a) "Permanent media filter" means a filter that utilizes a media that can be backwashed and reused;

(b) "Diatomaceous earth filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced; and

(c) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(25) "Filter aid" refers to any means used to enhance the efficiency of the filter media. Alum, as used on the bed of a sand filter, is also referred to as a filter aid.

(26) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(27) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support:

(a) "Permanent filter media" means finely graded material (such as sand, anthracite, etc.) which removes suspended filterable particles from the water.

(b) "Nonpermanent filter media" means any type of finely graded media used to coat a septum type filter usually diatomaceous earth, processed perlite or similar material for the purpose of removing fine particulates from the water.

(28) "Filter waste discharge piping" means piping that conducts wastewater from a filter to a drainage system. Connection to drainage system is made through an air gap or other approved method.

(29) "Filtration rate" means the rate of water flow through a filter while in operation, expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(30) "Flow balance valve" means a device to regulate the effluent from the skimmer housing of each of a combination of two (2) or more surface skimmers.

(31) "Flume" means an inclined channel which conveys the water and the bather from the top of the slide to the plunge pool of a water slide.

(32) "Friction loss" means the pressure drop expressed in feet (meters) of water or psi (pascals) caused by liquid flowing through the piping and fittings.

(33) "Handicap pool" means a swimming pool which is designed specifically for the use of persons who are physically or mentally

disabled or impaired, and is equipped with devices, appliances, ramps and other means of assisted access to the pool.

(34) "Head loss" means the total pressure drop in psi (kilopascals) or feet (meters) or head between the inlet and the outlet of a component.

(35) "Hydrojet booster pump system" means a system whereby one (1) or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.

(36) "Hydrojets" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

(37) "Indirect waste pipe" means a pipe that does not connect directly with the drainage system, but conveys liquid wastes by discharging into a plumbing fixture, interceptor, or receptacle which is directly connected to the drainage system.

(38) "Inlet fitting" means a fitting or fixture through which filtered water enters a pool or spa.

(39) "Listed" means equipment or materials included in a list published by a listing agency that maintains periodic inspection on current production of listed equipment or materials, and whose listing states either that the equipment or material complies with approved standards or has been tested and found suitable for use in a specified manner.

(40) "Main outlet" means the outlet fitting(s) at the bottom of a facility through which passes water to a recirculating pump. It is often referred to as a "main drain."

(41) "Multiport valve" means a valve for various recirculation related operations, which combines in one (1) unit the function of two (2) or more single direct flow valves.

(42) "National Sanitation Foundation (NSF)" is based at 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. It publishes a list of manufacturers and their equipment which has been approved as having satisfied NSF standards.

(43) "Perimeter overflow systems" means a channel at normal water level which normally extends completely around the pool perimeter. Also, known as an overflow or scum gutter.

(44) "Person" means any individual, firm, association, club, organization, partnership, business trust, corporation, company, or any state or local governmental agency.

(45) "Precoat" means the process of depositing a layer of diatomaceous earth on filter septa at the start of a filter cycle.

(46) "Public swimming and bathing facilities" or "facility" means any natural or artificial body or basin of water which is modified, improved, constructed, or installed for the purpose of public swimming or bathing under the control of any person and includes, but is not limited to, the following:

(a) Beaches;

(b) Swimming pools, wading pools, wave pools;

(c) Competition swimming pools and diving pools;

(d) Water slides and spray pools; and

(e) Spas, therapeutic pools, hydrotherapy pools, and whirlpools.

It includes those operated by communities, subdivisions, apartment complexes, condominiums, clubs, camps, schools, institutions, parks, mobile home parks, hotels, recreational areas, or similar public facilities. It does not include any of the above facilities which are at private single family residences intended only for the use of the owner and guests.

(47) "Public swimming and bathing facilities operator" means any "person" as defined above or any employees of that person who are delegated responsibility for the proper operation and maintenance of the facility.

(48) "Pump discharge pressure" means the actual gauge reading measured in psi taken at the discharge outlet of a pump.

(49) "Receptor" means an approved plumbing fixture or device of material, shape, and capacity to adequately receive the discharge from indirect waste piping, constructed and located to be readily cleaned.

(50) "Recirculation system" means the interconnected system traversed by the recirculated water from the pool until it is returned to the pool.

(51) "Residual chlorine" shall mean the amount of measurable chlorine remaining in water following chlorination and is composed of the following components:

(a) Free available residual chlorine shall mean the amount of chlorine which is available to inactivate microorganisms and which has not reacted with ammonia, nitrogenous material, and other material in swimming pool water;

(b) Combined residual chlorine (also called "chloramine") shall mean the amount of chlorine which has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds;

(c) Total residual chlorine shall mean the arithmetic sum of free available residual chlorine and combined residual chlorine; and

(d) The word "disinfectant" may be substituted for "chlorine" in the above.

(52) "Return piping" means that part of the piping between the filter and the facility through which passes the filtered water.

(53) "Separation tank" means a device used to clarify filter rinse or wastewater.

(54) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(55) "Spa" means a special facility designed for recreational and therapeutic use, and which is not drained, cleaned, or refilled after each individual use. It may include, but not be limited to, units designed for hydrojet circulation, hot water, cold water, mineral bath, air induction bubbles, or any combination thereof. Common terminology for a spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa."

(56) "Static suction lift" means the vertical distance in feet (meters) from the center line of the pump impeller to the level of water in the pool.

(57) "Spray pool" means an artificially constructed area over which water is sprayed but is not allowed to pool. Sprayed water flows to waste and is not recirculated.

(58) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(59) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of the pump and usually includes the following: main outlet piping, skimmer or gutter piping, vacuum piping, and surge tank piping.

(60) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available residual which is at least equal to ten (10) times the amount of combined residual chlorine plus the required minimum level of free available residual chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(61) "Surface skimmer" means a device designed to continuously remove surface film and water (and return it through the filter) as part of the recirculation system, usually incorporating a self-adjusting floating weir, strainer basket, a collection tank, and a means to prevent air lock of the pump. It is sometimes referred to as a "recirculating overflow," a "mechanical" or an "automatic skimmer."

(62) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(63) "Total discharge head" means the value in feet (meters) of water that a pump will raise water above its center line.

(64) "Total suction head" means the value in feet (meters) of water that a pump will lift by suction.

(65) "Total dynamic suction lift (TDSL)" means the arithmetical total of static suction lift, friction head loss, and velocity head loss working on the suction side of the pump.

(66) "Trimmer valve" means a flow adjusting device which is used to proportion flow among multiple skimmers on a single line.

(67) "Turnover time" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(68) "Vacuum piping" means the piping from the suction side of a pump connected to a vacuum fitting located at the facility and below the water level to which underwater cleaning equipment may be attached.

(69) "Velocity" means a measurement of the motion of liquids expressed in feet per second.

(70) "Wading pool" means a pool intended only for small children. The maximum depth is less than twenty-four (24) inches.

(71) "Water slide" means a slide which consists of one (1) or more flumes, a plunge pool, a pump reservoir, and water treatment facilities, where water is pumped to the top of the slide and allowed to flow down the flume to the plunge pool.

(72) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water.

(73) "Working pressure" means the normal operating pressure recommended by the manufacturer.

Section 3. Submission of Plans and Specifications for Approval. (1) No person shall begin construction, or construct, or substantially change, alter or reconstruct any public swimming and bathing facility until plans and specifications, with supporting design data as required in this administrative regulation for the proposed review of the plans, have first been submitted in quintuplicate (five (5) sets) to the cabinet through the Department of Housing, Buildings and Construction and have been approved in writing by all state or local agencies having jurisdiction. All construction shall be in accordance with approved plans. The front page of the plans shall contain the name of the swimming and bathing facility, location by city and county, name of its owner and name of the engineer, architect, or person preparing the plans. Plans submitted by an engineer or architect shall bear his seal. Plans and specifications on public swimming and bathing facilities constructed by the state or political subdivision, or on facilities designed for a bather load of 100 or more, shall be prepared by an engineer or architect registered in the State of Kentucky and comply with the provisions of KRS 322.010 and 323.010. Plans and specifications, reports and other information shall be submitted in form and content as may be specified by the cabinet.

(2) The plans shall be drawn to scale and accompanied by proper specifications to permit a comprehensive engineering review of the plans including the piping and hydraulic details and shall include:

(a) A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

(b) A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

(c) The specifications shall contain details on all treatment equipment, including performance ranges of pumps, chlorinators, chemical feeders, filters, strainers, lights, skimmers, inlet and outlet fittings, diving boards, safety equipment and other related equipment;

(d) A statement of the design, bather load expected to use the facility at any given time; and

(e) Drawing of equipment room showing placement of equipment.

(3) Owners shall keep one (1) set of approved plans available for inspection at the job site in the possession of the actual builder of the facility.

(4) Upon completion of the recirculation piping system and prior to such piping being covered with dirt or concrete, the owner or builder shall contact affected agencies for inspection.

(5) Upon completion of the swimming and bathing facility, a notarized statement certifying completion of the facility in accordance with the approved plans and specifications and this administrative regulation shall be submitted to the cabinet by the engineer, architect, or person who prepared plans, and shall be accompanied by a request for inspection prior to occupancy. The facility shall not be used until final inspection by affected agencies demonstrates compliance with this administrative regulation.

(6) Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

(7) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet and all other agencies having jurisdiction.

Section 4. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Natural Resources and Environmental Protection Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water slide plunge pools at least one (1) inch in three (3) hours.

Section 5. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 5:031, Section 6, recreational waters, as adopted by the Natural Resources and Environmental Protection Cabinet. Bacterial levels exceeding those standards shall be considered sufficient grounds to require additional investigation, survey, special analyses, and correction of any problems determined to be causing the high counts. Subsequent evaluation and satisfactory bacteriological results shall be obtained before approval for construction will be issued; and

(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Sewage and Wastewater Disposal. (1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer. If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085, on-site sewage disposal systems administrative regulation.

(a) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions, which create an offensive odor, or which produce a stagnant wet area, or which produce an environment for the breeding of insects;

(b) Wash or backwash water from sand filters or diatomaceous earth filters shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet.

Section 7. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Natural Resources and Environmental Protection Cabinet.

(2) Refuse containers of approved design and construction, with tight fitting lids, adequate in number, shall be provided at readily accessible locations at all public swimming and bathing facilities. These containers shall be mounted upon an approved rack or holder in all outdoor locations, and shall be maintained to prevent the creation of a health or safety hazard.

(3) Refuse containers in rest rooms or bather preparation and dressing areas may be of open-top or swing-lid design, except in women's rest rooms where swing-lid or other covered top containers shall be required.

(4) Bulk refuse storage areas shall be designed, constructed, drained, and maintained to prevent rodent and vermin harborage, breeding sites, or insanitary conditions. Bulk refuse containers shall be of approved design and construction, with tight fitting lids, adequate in number, and shall be placed upon an impervious surface within a suitable enclosure to prevent access by animals.

(5) If the facility is not in use after seasonal operation or for any other reason, the facility shall not be allowed to accumulate debris, give off objectional odors, become a breeding site for insects, or create any other nuisance situation.

Section 8. Facility Design and Construction. (1) All public swimming and bathing facilities and attendant structures such as bathhouses, dressing rooms, or rest rooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of the Kentucky State Building Code and the State Plumbing Code of the Department of Housing, Buildings, and Construction, Public Protection and Regulation Cabinet.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards which may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions (transition point);

3. At intermediate two (2) feet increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet or seven and five-tenths (7.5) m as measured peripherally.

(c) Depth markers shall be in arabic numerals at least four (4) inches (ten (10) cm) high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be visible plainly to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 9. Facility Water Treatment Systems. (1) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance and disinfect the water for all swimming and bathing facilities except bathing beaches. All system components shall bear the seal of approval of the National Sanitation Foundation (NSF). (Pumps greater than seven and five-tenths (7.5) HP which are not required to meet NSF testing standards shall be considered on a case-by-case basis.)

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control shall be provided in the recirculation pump discharge piping.

Turnover Rate. The turnover rate shall be as shown in the following table:

Type of Facility	Turnover Required
Diving Pools	8 hours or less
Wading Pools, Spas	30 minutes or less
Water Slides, Handicap Pools	2 hours or less
All Other Pools	6 hours or less

Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems. The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;

2. Seventy (70) feet for pressure sand or cartridge filters; or

3. Eighty (80) feet for pressure diatomaceous earth filters.

(c) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(d) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(e) A compound vacuum-pressure gauge shall be installed on the pump suction line. A vacuum gauge may be used for pumps with suction lift. A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(f) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(g) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are located downstream of the filter.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities. If a water heater is installed, the following shall apply:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the

temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control, which will prevent the introduction of water in excess of 100° Fahrenheit to swimming and diving pools and in excess of 104° Fahrenheit for spas shall be provided, and be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the applicable State Building Codes;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer's recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 BTU's/hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be located so that the rate of recirculation may be easily read. Flow meters shall be installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be provided for all facilities except beaches, and small indoor spas designed for six (6) or less bathers. A vacuum cleaning system capable of reaching all parts of the facility bottom shall be provided;

(b) A vacuum system may be provided which utilizes the attachment of a vacuum hose to the suction piping through the skimmer. Vacuumed water must pass through the skimmer's strainer basket;

(c) If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting(s) shall be provided eight (8) to twelve (12) inches below the normal water level and be provided with a cap or plug. Piping from this connection shall be to the suction side of the pump ahead of the hair and lint strainer, shall be at least one and one-half (1 1/2) inches in diameter and be equipped with a control valve near the junction with the pump suction line. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning;

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and

(e) Vacuum systems are to be used only when the facility is closed to bathers.

(6) Piping, skimmer and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water. All piping, valves, or fittings shall be color coded or suitably labeled, or marked to denote its purpose within the facility water treatment system.

(b) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping. Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(c) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be flow adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and permanently directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots. Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat. Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(d) Inlets for swimming and diving pools, wave pools, large spas, and water slide plunge pools shall be spaced as follows:

1. Inlets shall be placed completely around the pool, each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool; and
2. If inlets are to be placed on the bottom of the pool, the number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction thereof would represent one (1) additional inlet.

(e) Inlets for wading pools, and small spas for six (6) or less bathers, shall be at least two (2) in number, and placed so as to meet the requirements of paragraph (c) of this subsection.

(f) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(g) A continuous flume, tubing, or other arrangement near the pool water surface which serves as inlet supply piping and employs multiple "jet" inlets is approved provided the individual components of the system meet the requirements of paragraphs (a), (b) and (c) of this subsection and subsections (9)(a), (b) and (10) of this section.

(h) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities shall be provided with a main outlet at the deepest point to permit the facility to be completely and easily drained. Openings shall be covered by a proper grating which is not removable by bathers without the use of tools, and which cannot entrap their fingers. Openings of the grating shall be at least four (4) times the area of the main outlet pipe and have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow. The maximum width of grate openings shall be one-fourth (1/4) inch;

(b) Multiple outlets shall be provided in all facilities where the width of the facility is more than thirty (30) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series. All spas and wading pools shall have at least two (2) outlets;

(c) A hydrostatic relief valve may be provided for in-ground swimming and diving pools, wave pools, and water slide plunge pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and

(d) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(b) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities other than pools designed and used exclusively for diving, having a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system. Swimming and bathing facilities less then 1,600 square feet in area and thirty (30) feet or less in width may use surface skimmers.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;

2. Permit inspection, cleaning, and repair;

3. Be designed so that no ponding or retention of water occurs within any portion of the system; or the passage of small children into an enclosed chamber;

4. Be designed to prevent the entrapment of bather's arms, legs, and feet;

5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;

6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;

7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate. If the surge volume is to be stored in the perimeter overflow system, the system shall have the capacity to carry 100 percent of the design flow while maintaining the surge storage capacity;

8. Discharge to the recirculation system;

9. Be provided with sufficient drains and piping which will not allow the overflow channel to become "flooded" when the facility is in normal use; and

10. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities which have perimeter overflow systems shall be provided with a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, in the perimeter overflow system, in a surge tank, or a combination of these. Valving shall be provided where necessary, to automatically retain water during periods of facility use and to discharge water during the periods of nonuse so that the proper operating water level in the facility is maintained at all times.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof; with a minimum of two (2) skimmers provided, except for small spas, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other;

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;

(d) The surface skimmer piping shall have both a trimmer valve and a separate valve in the equipment room to permit adjustment of flow;

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve;

(f) A basket which can be removed without the use of tools and through which all overflow water must pass, shall be provided; and

(g) Skimmer equipped swimming and diving pools, wave pools, water slide plunge pools, and large spas shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to the facility to a surge tank, or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have pressure gauges;

2. Pressure filters shall have an observable free fall, or a sight glass shall be installed on the backwash discharge line;

3. Pressure filters shall have a manual air-relief valve at the high point;

4. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

5. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer;

6. Filter media shall meet NSF specifications;

7. Each facility shall have separate filtration and treatment systems;

8. Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season; and

9. Individual filters shall be designed with necessary valves and piping to permit isolation of individual filters for repairs while other units are in service.

(b) Rapid sand or gravity sand filters:

1. Rapid sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover. Open gravity type filters shall be designed for a filter rate not exceeding two (2) gallons per square foot per minute.

2. Filtering media shall consist of at least twenty (20) inches of graded, sharp filter sand with an effective size between four-tenths (0.4) and 0.55 mm and a uniformity coefficient not exceeding one and 1.75, supported by at least ten (10) inches of graded filter gravel. Anthracite with effective size of six-tenths (0.6) to eight-tenths (0.8) mm with a uniformity coefficient of not greater than one and eight-tenths (1.8) may be used in lieu of the sand. A reduction in gravel depth or an elimination of gravel may be permitted where equivalent performance and service are demonstrated.

3. At least twelve (12) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains which serve as overflows during backwashing.

4. The filter system shall be designed with necessary valves and piping to permit:

a. Filtering to pool; and

b. Individual backwashing of filters to waste at a rate of not less than fifteen (15) gallons per minute per square foot of filter area. A backwash rate of eight (8) gallons per square foot per minute shall be provided for anthracite filters;

5. Each filter shall be provided with an access opening of not less than a standard eleven (11) inch by fifteen (15) inch manhole and cover.

6. The filter tank and its integral parts shall be constructed of substantial material capable of withstanding continuous anticipated usage and shall be designed for a pressure safety factor of four (4) based on the maximum shutoff head of the pump. This shutoff head for design purposes shall in no case be considered less than fifty (50) pounds per square inch.

(c) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(d) Diatomaceous earth filters.

1. The design filtration rate shall not exceed one and one-half (1

1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water; and

5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air-pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation.

(e) Vacuum sand filters.

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(f) Cartridge filters.

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed 0.15 gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (e) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of eight (8) p.p.m. (two and seven-tenths (2.7) lbs/day chlorine gas or its equivalent for each 10,000 gallons of pool volume) for outdoor facilities and three (3) p.p.m. (one (1) lbs/day for chlorine gas or its equivalent for each 10,000 gallons of pool volume) for indoor facilities based on the flow rates specified in subsection (2)(a) of this section;

2. The equipment for supplying chlorine shall not be controlled by a day-date clock;

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter;

4. Pot feeders for supplying bromo-chlorodimethylhydantoin sticks shall contain at least 0.50 pounds of bromo-chlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;

5. Ozone may be used as a supplement to chlorination or bromination as required in subparagraph 1 or 4 of this paragraph. Ozonation equipment will be considered by the cabinet on a case-by-case basis for experimental use; and

6. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than .05 p.p.m. at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators.

1. The chlorine supply and gas feeding equipment shall be housed in a separate, relatively airtight room. The room shall be provided with an exhaust system which takes its suction not more than eight (8) inches from the floor and discharges out-of-doors in a direction to minimize exposure to toxic fumes. The fan shall be capable of producing one (1) air change per minute. Means for introducing a fresh air supply to the enclosure through appropriate openings such as filters, grill openings, or other similar openings, at a high point opposite the exhaust fan intake shall be provided. The room shall have a window at least eighteen (18) inches square, and shall have artificial lighting. Electrical switches for lighting and ventilation shall be outside and adjacent to the door. Scales for weighing chlorine cylinders in service shall be provided. Automatic changeover chlorinators may be substituted for scales.

2. Chlorine cylinders either full or empty shall be anchored, or chained in a vertical position. The valve protection hoods shall be kept in place, except when the cylinders are connected. Chlorine feed devices should be located directly on the tank if practical;

3. The chlorine feeding device shall be designed so that during interruptions of the flow of the water supply, gas feed is automatically terminated. In addition, the release of chlorine shall be terminated if the recirculation pump is shut off. If other than facility recirculated water is used, the supply line shall be equipped with an electric shut off valve wired to the recirculation pump and shall be equipped with an approved backflow preventer. If two (2) or more cylinders are in use, an automatic changeover valve shall be used;

4. Chlorinator vent lines shall be conducted to the out-of-doors similar to the chlorinator room exhaust system;

5. The gas chlorinator shall be the solution feed type capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere;

6. The water supply for the gas feeding equipment shall produce the flow rate and pressure required according to the manufacturer's specifications for proper operation of the equipment;

7. A self-contained breathing apparatus (SCBA) designed for use in a chlorine atmosphere and of a type approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH), shall be provided. This SCBA shall have sufficient capacity for the purpose intended. In addition a written respirator program shall be provided and employees shall be trained in the use and maintenance of such equipment to insure operability and safety. The SCBA shall be kept in a closed cabinet, accessible without a key, and located outside of the chlorine room. Installation of chlorinator equipment, and its operation, shall be carried on by and under the supervision of personnel experienced with installation and operation of such equipment. A chlorine valve shut off wrench shall be kept on the cylinder valve stem that is in use; and

8. In the event of a chlorine leak, the fire department or an agency trained in the handling of chlorine spills shall be immediately contacted. The phone numbers of the fire department or above agency shall be posted on the outside of the chlorine room door.

(e) pH control feeders. At facilities with a volume greater than 100,000 gallons, or at facilities utilizing gas chlorine as a disinfectant, a chemical feeder of positive displacement type shall be installed for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of at least forty (40) gallons capacity shall be provided.

(f) Erosion type chlorine feeders shall be prohibited.

(15) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:

(a) A DPD (Diethyl-P-Phenylene Diamine) colorimetric test kit shall be provided, which will determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;

(b) There shall be at least five (5) chlorine color standards and at least five (5) pH color standards. Chlorine standards shall range from one-tenth (0.1) to three (3.0) p.p.m. and pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4), as a minimum. Both tests shall be accurate to within two-tenths (0.2) units; and

(c) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 p.p.m.

Section 10. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available chlorine.

(b) Bromine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) to two and five-tenths (2.5) p.p.m. free available chlorine residual; and

3. Cyanuric acid concentration twenty-five (25) p.p.m. to fifty (50) p.p.m.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) p.p.m.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available chlorine;

(b) Bromine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) p.p.m., superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to three (3) p.p.m. or less, the facility shall be closed.

(3) pH. The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times to meet one (1) of the following:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool;

(b) The openings of the main outlet grate are clearly visible by an observer on the deck; and

(c) For wading pools the bottom of the pool shall be clearly visible.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 p.p.m., as determined by suitable test kits.

(6) Temperature. The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health. Air temperature at an indoor facility shall be higher than the water temperature, except for spas. In no instance will water temperatures for any facility including spas be permitted to exceed 104 degrees Fahrenheit. All facilities with heated water shall be provided with at least one (1) breakproof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity - daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) - weekly, or more often as needed.

(d) Temperature:

1. Spas - daily, or more often as needed; and

2. All other indoor facilities - daily.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 11. General Facility Operation and Maintenance. (1) Facility and facility area.

(a) All facilities shall be maintained free from sediment, lint, dirt, and hair. Cracks and other defects in the facility shall be repaired. The walls, ceilings, floors, and equipment shall be painted as often as necessary so that they are protected from deterioration. The bottom and sides of the facility shall be maintained so that they are free from deterioration;

(b) Decks shall be rinsed as necessary to be kept clean. Indoor decks shall be disinfected at least weekly. The walk areas, overflow gutters, counters, lockers, equipment, furniture, interior partitions, and walls shall be kept in good repair, clean, and sanitary; and

(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other obstacles which would restrict flow. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(3) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(4) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily; and

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair. Floors shall be maintained in a nonslip condition. Soap dispensers shall be filled and operable. Adequate supplies of toilet tissue, disposable hand drying towels, roll type cloth towels, or suitable hand drying devices shall be maintained.

(5) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(6) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical

inspector.

(8) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(9) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(10) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) - one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(11) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(12) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(13) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(14) Gas chlorinators.

(a) Gas chlorinators shall be repaired only by a person trained in servicing these units. The facility operator shall determine the appropriate emergency personnel to contact in the event of a chlorine gas emergency and have the telephone number of said personnel conspicuously posted;

(b) Chlorine cylinders shall be stored indoors in the area designed for that purpose and away from a direct source of heat. Cylinders shall not be moved unless the protection cap is secured over the valve; and

(c) Chlorinator, gas line, injector, and cylinders shall be checked daily for leaks. Chlorine will produce a white smoke in the presence of ammonia. In case of a chlorine leak, corrective measures shall be undertaken only by trained persons wearing proper safety equipment. All other persons shall leave the dangerous area until conditions are again safe.

(15) Self-contained breathing apparatus (SCBA).

(a) A record shall be kept of SCBA usage to insure that the unit will be serviceable when needed. The SCBA shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is located, and preferably outside the entrance to the equipment room; and

(b) The SCBA shall be serviced regularly as per manufacturer's recommendations.

(16) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(17) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(18) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(19) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(20) Miscellaneous chemicals.

(a) Chemicals other than disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat and in a clean, dry, and well-ventilated place which prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) p.p.m.

(21) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room which affords protection from the weather, prevents unauthorized access, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas mentioned above shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(22) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and waterborne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis, and immediately after high water conditions for floating or sunken debris, and obstructions at diving areas and high water turbidity which may present safety hazards to bathers.

Section 12. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352 - Swimming Pool Log Sheet furnished by the cabinet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Malfunctioning of equipment.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 13. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) A lifeguard or lifeguards shall be provided at all facilities which allow bathers sixteen (16) years of age or under to enter the facility area without a responsible person seventeen (17) years of age or older present.

(b) All facilities which do not provide a lifeguard must post and enforce the following rule: "No person may enter the facility area alone or swim alone."

(c) If lifeguards are required, lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross, YMCA, or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. More than one (1) lifeguard shall be on duty at large facilities or facilities with a large number of bathers. Lifeguards shall be provided at a ratio of one (1) per 200 bathers or one (1) per 2,000 square feet of water surface area, whichever is less;

3. Lifeguards shall be dressed in swimming attire; and

4. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

Section 14. Safety Equipment. (1) Facilities other than beaches having an area of more than 2,000 square feet of water surface area shall be provided with an elevated lifeguard chair. An additional lifeguard chair shall be provided for each additional 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) The following lifesaving equipment shall be provided:

(a) A U.S. Coast Guard approved ring buoy not more than fifteen (15) inches in diameter to which shall be attached a three-sixteenths (3/16) inch rope of length one and one-half (1 1/2) times the maximum pool width;

(b) A life pole or shepherd's crook type of pole having blunted ends with a minimum length of twelve (12) feet; and

(c) One (1) plywood backboard with straps, made to the specifications of the American Red Cross for back and neck injuries.

(4) The equipment listed in subsection (3) of this section shall be considered as one (1) unit (except paragraph (c)) and shall be considered as adequate for 2,000 square feet of facility water surface area. An additional unit shall be provided for each additional 2,000 square feet or major fraction thereof.

(5) Facilities limited to small spas, of less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(6) Bathing beach facilities shall provide the following lifesaving equipment in addition to that listed in subsection (3) of this section:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat, containing one (1) unit of lifesaving equipment and outfitted to meet state water safety administrative regulations; and

(c) A torpedo shaped buoy.

(7) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent, which shall be kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(8) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat mentioned in subsection (6)(b) of this section being located at the most centrally stationed lifeguard chair.

(9) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(10) All facilities shall have a nonpay telephone on the premises which is readily accessible and conspicuously located; for isolated facilities two (2) way radio communication systems to a manned telephone system may be substituted. The telephone number of a police, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the cabinet.

Section 15. Spectator and Bather Administrative Regulations. (1) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and shall be enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility is refused to all persons having any contagious disease, infectious conditions as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition which has the appearance of being infectious. Persons with excessive sunburn, abrasions which have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind are not permitted. A person under the influence of alcohol or exhibiting erratic behavior shall not be permitted in the facility area;

(b) No food, drink, gum, or tobacco will be allowed in other than specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized. No running and no boisterous or rough play (except supervised water sports) are permitted;

(d) People in street shoes and other spectators are not allowed in the facility, on the deck, and in the "wet" areas of the bathhouse, except those engaged in official duties;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;

(f) Glass, soap, or other material which might create hazardous conditions or interfere with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water is not permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Animals shall be excluded from the facility area.

(2) Due to the nature of bathing beaches, subsection (1)(c), (d), and (g) of this section shall not apply. Subsection (1)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except for parts dealing with those persons with excessive sunburn or those under the influence of alcohol or exhibiting erratic behavior, which shall be enforced at all facilities.

(3) In addition to the requirements of subsection (1) of this section, a caution sign shall be mounted adjacent to all spas which contain the following warnings:

CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high/low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa.

(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 16. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 17. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet, at its discretion, may require one (1) of the full facility inspections to be performed prior to a facility's opening; and

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation (indoor) facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of the following:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in p.p.m.;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall receive monitoring inspections once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(7) If an agent of the cabinet makes an inspection of a public swimming and bathing facility, he shall record his findings on an official cabinet inspection report form DFS-349 - Public Swimming and Bathing Facilities Inspection or DFS-350 - Public Swimming and Bathing Facilities Beach Inspection Report and provide the facility owner or the operator with a copy. The inspection report shall:

(a) Set forth any violation(s) if found;

(b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 18. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Health Services Laboratory or other laboratory licensed by the Natural Resources and Environmental Protection Cabinet for analysis. Samples shall be collected in approved containers and by approved sampling procedures.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) Fecal coliform; and

(c) Pseudomonad organisms.

(3) Multiple samples may be collected at bathing beaches to assure adequate representation of the entire facility water area.

(4) Need for additional samples at other times shall be triggered

by the results of monitoring inspections, reported disease outbreaks associated with the facility, or failure of previous samples to meet the standards outlined in Sections 5 and 19 of this administrative regulation. If a sample shows a positive test for contaminants as specified in subsection (2)(a), (b), and (c) of this section, the sample shall be repeated within one (1) to seven (7) days.

Section 19. Bacteriological Quality of Facility Water. (1) For facilities other than bathing beaches, no more than two (2) consecutive samples shall contain either:

(a) More than 200 bacteria per milliliter, as determined by the standard (thirty-five (35) degrees Centigrade) agar plate count;

(b) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 ml when the membrane filter test is used;

(c) Show a positive test (confirmed test) for pseudomonas organisms; or

(d) Show a positive test for fecal coliform organisms.

(2) Bathing beaches shall comply with the standards set forth in Section 5(3)(a) of this administrative regulation.

Section 20. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) If the cabinet finds any of the following conditions, it may immediately order by written notice the owner or operator to close the facility and to prohibit any person from using the facility:

(a) If conditions at a facility and appurtenances, including bathhouse facilities, upon inspection and investigation by a representative of the cabinet, create an immediate danger to health or safety;

(b) If the cabinet upon review of results of bacteriological analyses of water samples collected from a facility, finds that the water does not conform to the bacteriological standards promulgated by the cabinet for proper swimming and bathing water quality;

(c) If an environmental survey of an area shows evidence of sewage or other pollutional or toxic materials being discharged to waters tributary to a beach creating an immediate danger to health or safety;

(d) If turbidity levels of facility water do not meet the requirements of Section 10(4) of this administrative regulation;

(e) If in such cases as it is required, the presence of a satisfactory disinfectant residual, prescribed by the cabinet is absent;

(f) In any instance where the owner, operator, or any other employee or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(g) If recirculation system(s), filtration system(s), or disinfectant system(s) are not in operation (with exceptions for maintenance, and seasonal shut down); or

(h) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212 - Request for Hearing to the cabinet, to a hearing in accordance with 902 KAR 1:400. [~~as provided in this administrative regulation.~~]

(4) If the conditions are abated or if the results of analyses of water samples collected from the facility, in the opinion of the cabinet, comply with the cabinet's bacteriological standards for acceptable water quality, or if the turbidity decreases to the permissible limit, or if the disinfectant residual reaches a satisfactory level as prescribed by administrative regulation, the cabinet may authorize reopening the facility. If sources of sewage, pollution, or toxic materials discovered as a result of an environmental survey are eliminated, the cabinet may authorize reopening of such beach.

(5) In all other instances of violation of the provisions of this administrative regulation, including nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. If an owner or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the owner or operator shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the owner or operator, within such ten (10) day period.

(6) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.~~]

(7) Any person whose facility has been closed may, at any time make application for a reinspection on form DFS-215 - Application for Reinstatement of Suspended Permits for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400. [~~by the cabinet.~~] Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a hearing is filed with the cabinet by the owner or operator, within such ten (10) day period.

Section 21. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this administrative regulation, existing facilities and equipment being used prior to the effective date of this administrative regulation, which do not fully meet the design, construction, and materials requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 22. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve any person from compliance with any other state or local laws, dealing with pool operation and maintenance matters, or zoning requirements which may also be applicable.

Section 23. Variances. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these administrative regulations, except that an applicant may request and the cabinet may grant a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require adequate

proof from the applicant that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 2,118 public swimming pools and 38 public beaches.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 194.050.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. Environmental personnel act as agents to the cabinet and perform the execution of programs mandated by KRS 194.050 and this proposed amended regulation.

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.

2. State compliance standards. None exists.

3. Minimum or uniform standards contained in the federal mandate. None exists.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

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

RELATES TO: KRS Chapter 211.350 to 211.380, 211.990(2)
STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090(3), 211.180(3), 211.357, EO 95-79
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 directs the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge: KRS 211.357 directs the cabinet to establish a program of certification for installers of on-site sewage disposal systems. The purpose of this administrative regulation is to fulfill the requirement to establish a certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers. Executive Order 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.

Section 1. Definitions. As used in this administrative regulation the following terms shall have the meanings set forth below:

(1) "Approved" means that which has been considered acceptable to the cabinet.

(2) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~] and includes its authorized agents.

(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:

(a) "Probationary level" means the certification entry level for an installer as specified in KRS 221.357(2). Installers at this level may possess minimal technical knowledge and require additional training and frequent technical assistance in design and installation procedures; and

(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2). Installers at this level are expected to possess competency in design and installation of conventional and modified conventional on-site systems but may require additional training and occasional technical assistance for alternative systems or complex designs;

(4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.357.

(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this regulation.

(6) "Competency" means an acceptable level of professional conduct, workmanship, and technical knowledge in the design and installation of on-site sewage disposal systems.

(7) "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.

(8) "Person" means any individual, firm, corporation, association, organization, partnership, business trust, company or governmental unit.

Section 2. Application for Certification. (1) Any person proposing to offer services to construct, install, alter or repair on-site sewage disposal systems shall first have met the application requirements of the cabinet for certification and have obtained a valid certificate from the cabinet. Applications shall be made on form DFS-233 - Application for Certification to Install On-site Sewage Disposal Systems provided by the cabinet and shall include necessary information about the applicant, and shall be accompanied by an applicable fee as established in KRS 211.357(3).

(2) For probationary certification applicant's qualifications shall be as follows:

(a) Applicant shall be a specific individual person of legal age to conduct business in Kentucky;

(b) Applicant shall have sufficient skills and knowledge of regulations and construction techniques to pass a minimum competency examination;

(c) Applicant shall possess or have ready access to use of necessary construction equipment including a backhoe, dump truck, hand tools, transit or level and leveling rod; and

(d) Applicant shall submit proof of liability insurance.

(3) Applicant's qualifications for full certification shall be as follows:

(a) As specified in subsection (2)(a) through (d) of this section; and

(b) As specified in KRS 211.357(2).

(4) Applicants meeting the qualifications listed above shall be issued the appropriate certificate by the cabinet.

(5) Certification shall be valid only for the specific individual person to which it was issued and is not transferable to another person. Certification shall remain in effect and be valid statewide subject to the provisions of this regulation and KRS 211.357.

Section 3. Maintenance of Certification. (1) All persons holding valid certification under KRS 211.357 shall be required to attend training workshops offered by the cabinet to maintain certification and improve competency.

(2) Attendance at a minimum of two (2) training workshops per year with passing scores on workshop tests shall meet certification maintenance requirements.

(3) Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the discretion of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:

(a) Submission of a copy of the training agenda and course outlines; and

(b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.

(4) Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (3) of this section.

(5) Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 6 of this regulation and KRS 211.357(4).

Section 4. Training. (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.

(2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.

(3) A schedule of training workshops, including dates, times, location, topics, and registration forms shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.

(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.

(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.

(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.

(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.

(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 5. Materials and Equipment. (1) Each training course shall be developed into a training materials packet consisting of the following:

(a) Course outline.
(b) Instructor script.
(c) Trainee guide.
(d) Audiovisual materials.
(e) Trainee worksheets and reference sheets.
(f) Test.
(g) Instructor comment sheet.
(h) Trainee comment sheet.

(2) A complete training materials packet, assembled in a loose-leaf, three (3) ring binder, shall be provided to each instructor for each course.

(3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.

(4) A loose-leaf, three (3) ring binder shall be provided to each trainee at the first workshop attended. This binder shall be used by the trainee to assemble a reference manual for the first course and all subsequent courses attended.

(5) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.

(6) Audiovisual equipment, including an overhead projector, slide projector, projection screen, videocassette player, and television monitor shall be available to each instructor.

Section 6. Enforcement. (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this regulation shall result in administrative action being taken.

(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:

(a) Fails final inspection on any two (2) consecutive systems which require follow-up inspections before approval is granted;

(b) Backfills any system before final inspection is conducted and approval to backfill is given;

(c) Fails final inspection on any system which results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training deemed necessary to correct performance.

(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply. In addition, if necessary to correct damaged or abandoned systems or sites, surrender of business bond shall be required.

(5) In all instances of administrative action being taken for probation, suspension or revocation, a certified installer shall have the right to request an administrative hearing. The request shall be submitted in writing on form DFS-212 - Request for Hearing to the local health department having jurisdiction or to the cabinet. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The local health department or cabinet shall establish a time, date, and location for the hearing and notify the requestee in writing. At the conclusion of the hearing, the hearing officer shall make a finding of fact and conclusion of law with recommendations for action. A transcript of the hearing need not be made unless the requestee makes a request for a transcript at the time of the hearing request and assumes the cost of transportation.~~]

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(2) and (3), 211.357(4) and (5) or regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified in writing of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 3,100 certified on-site sewage system installers.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(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: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 211.357.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 211.370 states "The commissioner of the department for health services shall, upon written request from a local board of health, authorize the local board of health to serve as its agent to issue permits for on-site sewage disposal systems within that area of local board jurisdiction."

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.

2. State compliance standards. None exists.

3. Minimum or uniform standards contained in the federal mandate. None exists.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 10:150. Domestic septage disposal site approval procedures.

RELATES TO: KRS 211.970 to 211.982

STATUTORY AUTHORITY: KRS Chapter 13B, 211.980, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 211.970 to 211.982 direct the Cabinet for Health Services [~~Human Resources~~] to promulgate administrative regulations relating to approval of domestic septage treatment, land application, and surface disposal sites. This administrative regulation sets forth the procedures for complying with KRS 211.970 to 211.982. Executive Order 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.

Section 1. Definitions. In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:

(1) "Certified Inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(2) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic

sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank;

(b) Cesspool;

(c) Similar treatment works that receives commercial wastewater processes or individual wastewater processes; or

(d) Grease removed from a grease trap at a restaurant or similar grease producing business.

(3) "Grease" is defined pursuant to KRS 211.970(3) and shall not apply to mineral-based oils or greases.

(4) "Land application" means:

(a) The spraying or spreading of domestic septage or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease onto the land surface;

(b) The injection of domestic septage below the land surface; or

(c) The incorporation of domestic septage into the soil.

(5) "Operator" means a person operating or owning a domestic septage disposal, treatment, or recycling site, including their authorized agents.

(6) "Restrictive horizon" means a soil horizon that is relatively impervious to the downward movement of water, grease, domestic septage, or mixture because of its cemented, compacted or structural condition.

(7) "Water table" means the zone of soil saturation by groundwater.

Section 2. Application for Site Evaluation. (1) Form DFS-345, "Application and Site Evaluation" (6/94), shall be submitted by the applicant to the local health department on any site that is to be used as a domestic septage disposal site. Form DFS-345, "Application and Site Evaluation", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. A farm that receives less than 2,000 gallons of domestic septage per year shall not be required to be permitted however the farm shall be registered with the local health department. The disposal area where domestic septage is to be applied shall meet the requirements in Section 4 of this administrative regulation.

(2) The following documents shall accompany the application:

(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U. S. Geological Survey Quadrangle topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:

1. Number of acres and site boundaries;

2. Structures and other facilities;

3. Proposed disposal area;

4. Setback distances for features on the site and adjacent to the site as listed in Section 4, Table 8, of this administrative regulation;

5. North and prevailing wind direction; and

6. Access roads and other features outside of the boundaries of the site that may have an impact on site approval.

(b) Proposed operations plan including:

1. Methods and equipment for application, treatment, recycling, or storage;

2. Land usage and the nitrogen requirement for the crop or vegetation;

3. Application rate;

4. Monitoring program for vector and pathogen reduction;

5. Endangered species impact statement, if applicable; and

6. Other information deemed necessary by the cabinet.

Section 3. Site Evaluation Fee. (1) An evaluation fee shall be required for the cost of conducting a site evaluation by the local health department. The site evaluation fee shall be:

(a) Fifty (50) dollars per proposed disposal site that contains five (5) acres or less;

(b) $100 per sites greater than five (5) acres but less than twenty-five (25) acres;

(c) $150 per sites greater than twenty-five (25) acres but less than fifty (50) acres;

(d) $200 per sites greater than fifty (50) acres but less than 100 acres; and

(e) $300 per sites greater than 100 acres,

(2) Fee shall be made payable to the local health department.

Section 4. Site Approval Procedures. (1) A certified inspector shall evaluate each proposed site based on the factors listed in Tables 1 through 8 of this section. An official site evaluation form shall be completed classifying each factor using the following rating method:

(a) An "A" rating means that the site is acceptable for that site factor.

(b) An "M" rating means the site factor is acceptable with modification or restriction to the site or disposal method.

1. M_1 - Upslope surface water diversion required.

2. M_2 - Shallow placement of domestic septage shall maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a water table or bedrock. Lined wetland cells, storage, or treatment facilities may be excluded from this requirement;

3. M_3 - Shallow placement of domestic septage shall be required to maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a restrictive horizon.

4. M_4 - Acceptable if a curtain drain is installed to lower the water table to a level of eighteen (18) inches below the domestic septage application.

(c) A "U" rating means the site factor is not acceptable. Reclamation site areas with "U" ratings may be acceptable for disposal sites if the disposal activity will not contaminate the groundwater or create a public health nuisance.

(2) Topography.

TABLE 1
SITE TOPOGRAPHY

DISPOSAL METHOD	SLOPE 0 TO 12%	SLOPES >12% TO 25%	SLOPES > 25% OR NONUNIFORM
SURFACE APPLICATION	A	U	U
SHALLOW INCORPORATION	A	U	U
DEEP INCORPORATION	A	M_1	U

(3) Landscape position.

TABLE 2
LANDSCAPE POSITION

DISPOSAL METHOD	FLAT OR CONVEX: RIDGETOP; NATURAL TERRACES; SHOULDER SLOPE; SIDESLOPE; FOOTSLOPES; TERRACES	CONCAVE: SHOULDER SLOPE; SIDESLOPE	CONCAVE: RIDGETOPS; TERRACES; FOOTSLOPES; TOESLOPES; SINKHOLES; KARST DEPRESSIONS; FLOODPLAINS
SURFACE APPLICATION	A	M_1	U
SHALLOW INCORPORATION	A	M_1	U
DEEP INCORPORATION	A	M_1	U

(4) Soil texture. Soil texture shall be classified as follows:

(a) Soil Group I. Sandy texture soils containing more than the seventy (70) percent sand-sized particles including the sand and loamy sand soil textural classes;

(b) Soil Group II. Coarse loamy texture soils containing more than thirty (30) percent clay-sized particles including sandy loam and loam soil texture classes;

(c) Soil Group III. Fine loamy soils containing less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles including sandy clay loam, silt loam, clay loam, and silty lay loam textural classes; and

(d) Soil Group IV. Clay texture soils containing forty (40) percent or more clay-sized particles including sandy clay, silty clay, and clay.

TABLE 3
SOIL TEXTURAL GROUP

DISPOSAL METHOD	SOIL TEXTURAL GROUP I	SOIL TEXTURAL GROUP II & III	SOIL TEXTURAL GROUP IV
SURFACE APPLICATION	U	A	A
SHALLOW INCORPORATION	U	A	A
DEEP INCORPORATION	U	A	A

(5) Depth to a restrictive horizon.

TABLE 4
DEPTH TO RESTRICTIVE HORIZON

DISPOSAL METHOD	RESTRICTIVE HORIZON < 18"	RESTRICTIVE HORIZON FROM 18" TO 24"	RESTRICTIVE HORIZON FROM 24" TO 42"	RESTRICTIVE HORIZON > 42"
SURFACE APPLICATION	U	A	A	A
SHALLOW INCORPORATION	U	M_3	M_3	A
DEEP INCORPORATION	U	U	M_3	A

(6) Depth to a water table.

TABLE 5
DEPTH TO WATER TABLE

DISPOSAL METHOD	WATER TABLE DEPTH < 18"	WATER TABLE DEPTH FROM 18" TO 24"	WATER TABLE DEPTH FROM 24" TO 42"	WATER TABLE DEPTH > 42"
SURFACE APPLICATION	$M_{2,4}$	A	A	A
SHALLOW INCORPORATION	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$
DEEP INCORPORATION	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$

(7) Soil depth.

TABLE 6
SOIL DEPTH

DISPOSAL METHOD	SOIL DEPTH <18"	SOIL DEPTH 18" TO 24"	SOIL DEPTH 24" TO 42"	SOIL DEPTH > 42"
SURFACE APPLICATION	U	A	A	A
SHALLOW INCORPORATION	U	M_2	M_2	M_2
DEEP INCORPORATION	U	U	M_2	M_2

(8) Available space. The disposal site area shall be a minimum of one (1) acre (43,560 sq. ft.) after application of the setback distance requirements.

TABLE 7
AVAILABLE SPACE

DISPOSAL METHOD	ONE YEAR DISPOSAL CAPACITY	LESS THAN ONE YEAR DISPOSAL CAPACITY
SURFACE APPLICATION	A	U
SHALLOW INCORPORATION	A	U
DEEP INCORPORATION	A	U

TABLE 8
MINIMUM SETBACK DISTANCES FOR DOMESTIC SEPTAGE DISPOSAL SITES

SITE FEATURES	SURFACE APPLICATION; EXPERIMENTAL DISPOSAL METHODS	SHALLOW INCORPORATION	DEEP INCORPORATION
POTABLE WATER SUPPLIES AND WELLS	500 FEET	300 FEET	300 FEET
LAKES, PONDS, STREAMS, INTERMITTENT WATER WAYS DOWNSLOPE	200 FEET	100 FEET	100 FEET
SINKHOLES, KARST, DEPRESSIONS	200 FEET	200 FEET	200 FEET
DWELLINGS, BUSINESS, BEACHES, PUBLIC GATHERINGS	600 FEET	500 FEET	300 FEET
PROPERTY LINE OR EASEMENTS	100 FEET	50 FEET	50 FEET
PUBLIC ROADS	200 FEET	200 FEET	100 FEET

(9) Backhoe pits or a soil probe truck shall be used to determine soil characteristics and as necessary, shall be randomly spaced and taken to a depth of forty-two (42) inches unless limited by site conditions. The applicant shall provide the backhoe or soil probe truck.

Section 5. Appeal Procedures. (1) A hearing shall be provided, in accordance with 902 KAR 1:400, at the request of the applicant if a site has been disapproved.

(2) The request for a hearing shall be made in writing on Form DFS-212, "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The cabinet shall notify the requesting party in writing of the:~~

~~(a) Name of the hearing officer; and~~

~~(b) Time and place of the hearing.~~

~~(4) All parties shall have the right to:~~

~~(a) Be represented by counsel;~~

~~(b) Present evidence on his behalf; and~~

~~(c) Cross-examine witnesses.~~

~~(5) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.~~

~~(6) The hearing officer shall have the authority to issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet.~~] Service of process and proof of service shall comply with KRS 211.220.

[~~(7) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.~~]

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: 13 domestic septage disposal sites statewide.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 211.970 to 211.982.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 503, Standards for the Use or Disposal of Sewage Sludge.

2. State compliance standards. Defines site evaluation and approval process, and appeal procedures.

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate provided minimum standards. This administrative regulation defines and clarifies those standards.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 10:160. Domestic septage disposal site operation.

RELATES TO: KRS 211.970 to 211.982

STATUTORY AUTHORITY: KRS Chapter 13B, 211.980, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 211.970 to 211.982 direct the Cabinet for Health Services [~~Human Resources~~] to promulgate administrative regulations relating to conduct of business; approval of domestic septage treatment and disposal methods; approval of domestic septage treatment, land application, and surface disposal sites; inspection and administrative enforcement procedures; and any

other matters deemed necessary to protect public health and the environment. This administrative regulation sets forth the procedures for complying with KRS 211.970 to 211.982. Executive Order 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.

Section 1. Definitions. In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:

1) "Certified inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(2) "Deep incorporation" means land application by subsurface injection, trench disposal, or a furrow-placement-cover operation.

(3) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank;

(b) Cesspool;

(c) Similar treatment works that receives commercial wastewater processes or individual wastewater processes; or

(d) Grease removed from a grease trap at a restaurant or similar grease producing business.

(4) "Grease" is defined pursuant to KRS 211.970(3) and shall not apply to mineral-based oils or greases.

(5) "Land application" means the spraying or spreading of domestic septage onto the land surface; the injection of domestic septage below the land surface; or the incorporation of domestic septage into the soil.

(6) "Operator" means a person owning, operating, or controlling a septic tank domestic septage servicing business or a person operating or owning a domestic septage disposal, treatment, or recycling site, including their employees or agents.

(7) "Shallow incorporation" means land application by surface spreading followed by plowing, disking, or harrowing.

Section 2. Application for Permit to Operate. (1) No person shall construct or operate a site for domestic septage disposal or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease without having first obtained a permit from the cabinet. Nothing in this administrative regulation shall require a farm owner to be permitted as a disposal site if that farm receives less than 2,000 gallons of domestic septage per year. However, the farm shall be registered with the local health department and the disposal of domestic septage on the farm shall not contaminate the groundwater or surface water or create a public health nuisance.

(2) Form DFS-200, "Application for Permit to Operate" (8/88), shall be submitted to the local health department for the initial application. Form DFS-233 (10/87) "Application for Permit" shall be submitted to the local health department annually for permit renewal. Form DFS-234 (12/92) "Permit to Operate" shall be posted in a conspicuous place at the disposal site. Forms DFS-200, "Application for Permit to Operate"; DFS-233, "Application for Permit"; and DFS-234 (12/92), "Permit to Operate" are incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(3) The following documents shall accompany the application:

(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U.S. Geological Survey Quadrangle topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:

1. Number of acres and site boundaries;
2. Structures and other facilities;
3. Approved disposal area;
4. Setback distances of features on and adjacent to the site;
5. North and prevailing wind direction; and
6. Access roads and other features outside of the boundaries of the site.

(b) Proposed operations plan including:

1. Methods and equipment for application or storage;
2. Land usage and the nitrogen requirement for the crop or vegetation;
3. Application rate;
4. Pathogen reduction and vector control plan; and
5. Certification statement submitted with the permit application stating: "I certify, under penalty of law, that pathogen reduction and the vector attraction reduction requirements have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements have been met."

(4) A permit to operate shall be issued after the applicant meets the requirements of this administrative regulation.

(5) The permit shall expire March 1 of each year.

Section 3. Permit and Inspection Fees. (1) An annual permit fee of $150 is assessed for each permitted site to cover the costs of reviewing documentation and conducting inspections by the local health department.

(2) Fees shall be made payable to the local health department.

Section 4. Business Requirements. (1) The operator of a domestic septage disposal site shall:

(a) Refuse to accept any type of waste for which the site is not approved.

(b) Maintain the site, facilities, and equipment in a safe and sanitary condition.

(c) Direct and manage the unloading and application of domestic septage to the site during the hours of operation.

(d) Notify service vehicle operators if the site is closed during normal working hours.

(e) Notify the local health department immediately of any person who discharges prohibited waste.

(f) Submit a written closure plan to the local health department prior to thirty (30) days of closure.

(2) The owner of a disposal site shall:

(a) Provide written notification to the subsequent owner prior to the sale that the land was used as a domestic septage disposal site.

(b) Maintain a list of the vehicle license numbers, disposal method, location, and total number of gallons of domestic septage or domestic septage mixed with grease received, retain these records for five (5) years, and make these records available to the cabinet during normal business hours.

Section 5. Approved Methods of Domestic Septage Disposal. (1) Surface application and shallow incorporation.

(a) Equipment used for surface application shall have a spray bar, splash plate, or other device to evenly distribute the domestic septage while the equipment is in motion. The device shall be designed to direct the contents away from the vehicle and shall be rinsed prior to it leaving the site.

(b) The domestic septage shall be surface spread uniformly to prevent ponding.

(c) Domestic septage storage facilities shall be provided during periods of inclement weather.

(d) The site shall have a well-established and maintained sod covering or approved vegetation unless the domestic septage application is used to establish a vegetative cover in reclamation.

(e) Sufficient alkali shall be applied to each surface application of domestic septage or domestic septage mixed with grease to raise the pH to twelve (12) for thirty (30) minutes to control odor and vectors, unless previously added.

(f) Domestic septage on sites using shallow incorporation shall be incorporated into the soil within six (6) hours.

(g) Incorporation of domestic septage shall follow the contour of the site to minimize erosion and runoff.

(2) Deep incorporation.

(a) Deep incorporation of domestic septage shall follow the contour of the site to minimize soil erosion and runoff.

(b) If approved, trenches shall be a maximum of two (2) feet deep and two (2) to ten (10) feet wide. Actual configuration of the width and linear dimensions may be restricted by topography and soil conditions.

1. The excavated soil from the trench or bed shall be placed on the uphill side to control the movement of surface water into the trench or bed.

2. Sufficient alkali shall be spread over each application of domestic septage placed in a trench to control odor and vectors.

3. The trench shall be covered with a minimum of one (1) foot of soil when it reaches its holding capacity and has dewatered sufficiently.

4. Trenching of grease alone is prohibited.

Section 6. Experimental Disposal Methods. The following disposal methods shall be considered experimental and, if it is determined that they are likely to have an adverse environmental impact, the cabinet shall submit the application for review by the Natural Resources and Environmental Protection Cabinet:

(1) Lagoon pretreatment;

(2) Wetlands pretreatment;

(3) Lagoon/wetlands;

(4) In-vessel composting;

(5) Static pile composting;

(6) Windrow composting;

(7) Recycling; and

(8) Other proposed methods not specified by this administrative regulation.

Section 7. Disposal Restrictions. The following restrictions shall apply to all land disposal methods if alkali is not added to the domestic septage:

(1) Public access to the site shall be restricted for at least twelve (12) months.

(2) Grazing of animals whose products are consumed by humans shall be prohibited for one (1) month after application.

(3) If crops for direct human consumption are grown within eighteen (18) months of the last domestic septage application, and the edible portion of the crop is in contact with the domestic septage, any domestic septage applied to the land or incorporated into the soil shall be treated by a process to further reduce pathogens (PFRP) using one (1) the following technologies:

(a) Composting. Using the within-vessel composting method or the static aerated pile composting method, the temperature of the domestic septage shall be maintained at 131 degrees Fahrenheit or greater for three (3) days. Using the windrow composting method, the temperature of the domestic septage shall be maintained at 131 degrees Fahrenheit or greater for fifteen (15) days or longer. During the period when the compost is maintained at 131 degrees Fahrenheit or greater, there shall be a minimum of five (5) turnings of the windrow.

(b) Heat drying. Domestic septage shall be dried by direct or indirect contact with hot gases to reduce the moisture content of the domestic septage to ten (10) percent or lower. The temperature of the domestic septage particles shall exceed 176 degrees Fahrenheit or the wet bulb temperature of the gas in contact with the domestic septage as the domestic septage leaves the dryer shall exceed 176 degrees Fahrenheit.

(c) Heat treatment. Liquid domestic septage shall be heated to a temperature of 356 degrees Fahrenheit or greater for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid domestic septage shall be agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the domestic septage is ten (10) days at 131 to 140 degrees Fahrenheit.

(e) Beta ray irradiation. Domestic septage shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature (ca. sixty-eight (68) degrees Fahrenheit).

(f) Gamma ray irradiation. Domestic septage shall be irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (ca. sixty-eight (68) degrees Fahrenheit).

(g) Pasteurization. The temperature of the domestic septage shall be maintained at 158 degrees Fahrenheit or greater for thirty (30) minutes or longer.

(h) Other methods or operating conditions may be acceptable if pathogens are reduced equivalent to any of the above add-on methods.

(4) The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using the following equation:

$$AAR = \frac{N}{0.0026}$$

Where:
AAR = Annual application rate in gallons per acre per 365-day period.
N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

Section 8. Domestic Septage Disposal Site Maintenance. (1) Sites shall be maintained to prevent the creation of a public health hazard or degrading conditions to the environment.

(2) A plot plan shall be posted at the site showing the following information:

(a) Division of site by approved application methods; and

(b) Number of gallons of domestic septage applied.

(3) Access roads shall be maintained to minimize dust and rutting.

(4) Surface application shall not be applied during or immediately after inclement weather or a hard freeze.

(5) Warning signs, fencing, or barriers may be required to prevent unauthorized entry into the disposal area.

Section 9. Existing Domestic Septage Disposal Sites. (1) Domestic septage disposal sites existing prior to the effective date of this administrative regulation may continue to operate if the cabinet determines that the site and disposal methods do not create a health or safety hazard. The determination shall be made after a site evaluation and physical inspection by the cabinet of the existing site. Results of the determination shall be made in writing to the site owner. The site owner shall obtain a permit to operate using Form DFS-200 as required in Section 2 of this administrative regulation within thirty (30) days of the effective date of this administrative regulation.

(2) Vehicles, tanks, equipment, and facilities in use at the disposal site prior to the effective date of this administrative regulation, which do not meet the design, construction, or material requirements of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition. The determination shall be made after a physical inspection by the cabinet of the vehicles, tanks, equipment, and facilities. Results of the determination shall be made in writing to the owner.

(3) Replacement of existing vehicles, tanks, equipment, and facilities shall meet the requirements of this administrative regulation. The owner shall notify the cabinet of any replacement.

Section 10. Inspection Procedures. (1) At least one (1) time every calendar year the cabinet shall inspect:

(a) Vehicles;

(b) Equipment;

(c) Domestic septage storage facilities used at the site; and

(d) The domestic septage disposal site.

(2) The cabinet shall have the right of access to inspect vehicles, equipment, domestic septage storage locations, and the domestic septage disposal sites during normal hours of operation. The right of access at all times shall not be denied in the event of a potential imminent health hazard.

(3) The findings shall be recorded on Form DFS-315, "Inspection Report" (11/92), and a copy of the inspection report shall be provided to the owner or operator. Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) If a violation is found, the inspection report shall:

(a) Set forth the specific violation;

(b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.982 and this administrative regulation may result in initiation of the enforcement proceedings in Section 11 of this administrative regulation and KRS 211.995.

Section 11. Administrative Enforcement Procedures. (1) A permit may be suspended or revoked upon evidence that the operator:

(a) Knowingly violates the provisions of KRS 211.970 to 211.980 or this administrative regulation;

(b) Accepts prohibited wastes;

(c) Practices fraud or deception in applying for a permit;

(d) Fails to pay required fees;

(e) Is incompetent to operate a domestic septage disposal site; or

(f) Interferes with the cabinet in the performance of its duties.

(2) A hearing shall be provided, after request by the operator, if:

(a) A permit is denied, suspended, or revoked; or

(b) An inspection indicates failure to comply with the requirements of KRS 211.970 to 211.982 or this administrative regulation.

(3) The request for a hearing shall be made in writing on Form DFS-212, "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The cabinet shall notify the requesting party in writing of the:~~

~~(a) Name of the hearing officer; and~~

~~(b) Time and place of the hearing.~~

~~(5) All parties shall have the right to:~~

~~(a) Be represented by counsel;~~

~~(b) Present evidence on his behalf; and~~

~~(c) Cross-examine witnesses.~~

~~(6) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.~~

~~(7) The hearing officer shall have the authority to issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet.~~] Service of process and proof of service shall comply with KRS 211.220.

[~~(8) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.~~]

(5) [~~(9)~~] An injunction may be obtained by the cabinet or local health department if immediate action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.982 and this administrative regulation.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: 13 domestic septage disposal sites statewide.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 211.970 to 211.982.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 503, Standards for the Use or Disposal of Sewage Sludge.

2. State compliance standards. Defines operation of domestic septage disposal sites.

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate provided minimum standards. This administrative regulation defines and clarifies those standards.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 10:170. Septic tank servicing.

RELATES TO: KRS 211.970 to 211.982

STATUTORY AUTHORITY: KRS Chapter 13B, 211.980, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 211.970 to 211.982 direct the Cabinet for Health Services [~~Human Resources~~] to promulgate administrative regulations relating to vehicle tank and equipment requirements; conduct of business; inspection and administrative enforcement procedures, including suspension or revocation of licensing; injunctive action; and any other matters deemed necessary to protect public health and the environment. This administrative regulation sets forth the procedures for complying with KRS 211.970 to 211.982. Executive Order 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.

Section 1. Definitions. In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:

(1) "Agricultural land" means land on which a food crop, feed crop, or fiber crop is grown such as range land, pasture land or farms.

(2) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank;

(b) Cesspool;

(c) Similar treatment works that receives commercial wastewater processes or individual wastewater processes; or

(d) Grease removed from a grease trap at a restaurant or similar grease producing business.

(3) "Domestic sewage" means waste and wastewater from humans or household operations that is discharged to, or otherwise enters a wastewater treatment works.

(4) "Grease" is defined pursuant to KRS 211.970(3) and shall not apply to mineral-based oils or greases.

(5) "Land with a high potential for public exposure" means land that the public uses frequently such as construction sites located in a city, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

(6) "Land with a low potential for public exposure" means land that the public infrequently uses or is in contact with such as agricultural land, forest, and a reclamation site located in an unpopulated area.

(7) "Operator" means a person owning, operating, or controlling a septic tank servicing business, including their employees or agents.

(8) "Pathogens" means disease-causing organisms such as certain bacteria, protozoa, viruses, and viable helminth ova.

(9) "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.

(10) "Reclamation site" means drastically disturbed land that is reclaimed using domestic septage such as strip mine and construction sites.

(11) "Vector attraction" means the characteristics of domestic septage that attract rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(12) "Surface disposal site" means an area of land that is used for

domestic septage disposal.

Section 2. Conduct of Business. A septic tank service operator shall:

(1) Not dispose of domestic septage or domestic septage mixed with grease unless approved by the cabinet at a permitted site, treatment facility, or registered farm that receives less than 2,000 gallons of domestic septage per year.

(2) Register a farm that receives less than 2,000 gallons of domestic septage or domestic septage mixed with grease with the local health department.

(3) Not apply additional domestic septage or domestic septage mixed with grease to any disposal site if the annual application rate has been reached during a 365-day period.

(4) Verify in writing that the vector attraction reduction and pathogen reduction requirements have been met if disposing of domestic septage or domestic septage mixed with grease.

(5) Maintain setback distances from features as required in 902 KAR 10:150, Section 4 (8), Table 8.

(6) Not dispose of domestic septage or domestic septage mixed with grease during adverse weather or if the site is snow covered or frozen.

(7) Provide an adequate storage facility during adverse weather, wet site conditions, or if the disposal site is not accessible.

(8) Maintain written authorization from the land owner or facility operator to use the site to dispose of domestic septage or domestic septage mixed with grease. The authorization shall be maintained in each licensed vehicle and at the business office.

(9) Remove all domestic septage from the tank being serviced.

(10) Not use chemicals or biological cleaners, starters, or other agents as part of the service unless the material has been approved by the cabinet. An additive may be approved if it can be demonstrated that the product has a positive benefit and no adverse effect on the operation and performance of an on-site sewage disposal system.

(11) Re-cover access openings and leave the property in a safe and sanitary condition.

(12) Notify the owner of any damage to the sewage treatment or disposal system found during the servicing operation.

(13) Provide the customer an invoice containing the following minimum information:

(a) Customer's name;

(b) Location of service;

(c) Date of service;

(d) Amount of domestic septage and grease from grease traps removed in gallons;

(e) Vehicle license number;

(f) Name and address of servicing business;

(g) Printed and signed name of individual vehicle operator; and

(h) Name and location of approved disposal site, registered farm, landfill, or treatment facility.

(14) Retain copies of customer invoices and other records pertaining to the business operation for five (5) years and make available upon request by the cabinet during normal business hours.

(15) Maintain the following information if domestic septage or domestic septage mixed with grease has been applied to an approved site:

(a) Location by street address, descriptive location, or latitude and longitude of each site where domestic septage or domestic septage mixed with grease has been applied;

(b) The number of acres in each site;

(c) The date and time of application of the domestic septage or domestic septage mixed with grease;

(d) The nitrogen requirement for the crop or vegetation grown on the site during the 365-day period;

(e) Application rate, in gallons, per acre per 365-day period of domestic septage or domestic septage mixed with grease;

(f) The following certification statement: "I certify, under penalty of law, that the pathogen reduction and vector attraction reduction requirements have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(g) A description of how the pathogen and vector attraction reduction requirements have been met; and

(h) Name and location of wastewater treatment facility or landfill used to dispose of the domestic septage or domestic septage mixed with grease.

(16) Submit plans and a statement of compliance with KRS 211.970 and this administrative regulation prior to transportation or disposal of domestic septage or domestic septage mixed with grease within the borders of the Commonwealth.

(17) Provide employees with necessary personal protective equipment suitable for the work being performed such as gloves, clothing, and respiratory masks.

Section 3. Grease Disposal. (1) Grease traps serviced at restaurants, residential, or institutional food preparation may be mixed at a ratio of three (3) parts domestic septage to one (1) part grease and disposed at approved disposal sites.

(2) Grease alone may be discharged into a publicly owned wastewater treatment works that will accept grease pumpings.

(3) Grease may be dewatered and disposed at a landfill that will accept grease pumpings.

(4) Grease alone shall not be land applied.

Section 4. Vehicle, Tank, and Equipment Requirements. (1) All vehicles, tanks, and equipment used in the pumping, transporting, treatment, or disposal of domestic septage or grease traps shall be maintained in safe and sanitary condition.

(2) Tanks used in the pumping or transporting of domestic septage shall meet the following additional requirements:

(a) Tanks shall be leak-proof, constructed of, or coated with, a corrosion resistant material, and securely attached to the vehicle chassis;

(b) Discharge openings shall be constructed so the tank completely drains and the discharge stream is not obstructed by any part of the vehicle or equipment, except for splash plates, spray bars, or similar devices; and

(c) Valves at the tank inlet and outlet shall be water-tight and fitted with caps or plugs for use during transport or storage.

(3) Pumps, valves, and hoses shall be maintained to prevent leakage and meet the following requirements:

(a) Pumps shall be self-priming;

(b) Pump shall be maintained to prevent backflow;

(c) Connections or openings shall be water-tight and fitted with caps or plugs if the pumping system is not in use;

(d) Pulleys, chains, belts, or flexible shafts shall have guards to prevent injury; and

(e) Hoses shall have leak-proof connectors, caps, or plugs unless stored in leak-proof compartments.

Section 5. Existing Vehicles, Tanks, and Equipment. (1) Any vehicle, tank, or equipment in use prior to the effective date of this administrative regulation, which does not meet the design, construction, or material requirements in Section 3 of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition as determined by the cabinet.

(2) Replacement of existing vehicles, tanks, and equipment after the effective date of this administrative regulation shall meet the requirements of this administrative regulation.

Section 6. Inspection Procedures. (1) At least one (1) time every calendar year the cabinet shall inspect:

(a) Vehicles;

(b) Equipment; and

(c) The domestic septage storage location.

(2) The cabinet shall have the right of access to inspect vehicles, equipment, and domestic septage storage locations during normal hours of operation. The right of access shall not be denied in the event of an imminent health hazard.

(3) The findings shall be recorded on Form DFS-315, "Inspection Report" (9/93), and a copy of the inspection report shall be provided to the owner or operator. Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) If a violation is found, the inspection report shall:

(a) Set forth the specific violation;

(b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.982 and this administrative regulation may result in initiation of the enforcement proceedings in Section 7 of this administrative regulation and KRS 211.995.

Section 7. Administrative Enforcement Procedures. (1) A license may be suspended or revoked upon if the operator:

(a) Knowingly violates the provisions of KRS 211.970 to 211.980 or this administrative regulation;

(b) Practices fraud or deception in applying for a license;

(c) Fails to pay required fees or maintain bonding requirements;

(d) Interferes with the cabinet in the performance of its duties.

(2) A hearing shall be provided, after request by the operator, if:

(a) A license is denied, suspended, or revoked; or

(b) An inspection indicates repeated violations or failure to comply with the requirements of KRS 211.970 to 211.982 or this administrative regulation.

(3) The request for a hearing shall be made in writing on Form DFS-212, "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The cabinet shall notify the requesting party in writing:~~

~~(a) Name of the hearing officer; and~~

~~(b) Time and place of the hearing.~~

~~(5) All parties shall have the right to:~~

~~(a) Be represented by counsel;~~

~~(b) Present evidence on his behalf; and~~

~~(c) Cross-examine witnesses.~~

~~(6) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.~~

~~(7) The hearing officer shall have the authority to issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet.~~] Service of process and proof of service shall be made pursuant to KRS 211.220.

[~~(8) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.~~]

(5) [~~(9)~~] An injunction may be obtained by the cabinet or local health department if immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.982 or this administrative regulation.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 410 septic tank servicing vehicles in-state.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 211.970 to 211.982.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 503, Standards for the Use or Disposal of Sewage Sludge.

2. State compliance standards. Defines business of septic tank service operator; requirements of vehicle, tank, and equipment; existing vehicles, tanks, and equipment; inspection procedures; and administrative enforcement procedures.

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate provided minimum standards. This administrative regulation defines and clarifies those standards.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Health Systems Development
(Amendment)

902 KAR 13:090. Disciplinary actions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.964, EO 95-79

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to emergency medical technicians. This administrative regulation establishes procedures for taking disciplinary action against an applicant for certification or certified emergency medical technician (EMT), EMT-first responder, EMT-first responder instructor, EMT-instructor, or EMT-instructor trainer. Executive Order 95-79, effective 12-18-95, reorganizes the Cabinet for Human Resources and places the Department for Health Services and its programs under the Cabinet for Health Services.

Section 1. Denial, Revocation, Suspension, and Restriction of Certificates. The cabinet may deny, revoke, suspend, or restrict the certificate of a person who:

(1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(2) Uses drugs or controlled substances to the extent it may effect his ability to perform the duties of an EMT, or becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);

(3) Uses alcohol to the extent that it may affect his ability to perform the duties of an EMT or becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);

(4) Has or develops a physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public;

(5) Fails to:

(a) Follow the appropriate standards of care in the management of a patient;

(b) Administer medicine or treatment in a responsible manner in accordance with:

1. His level of certification;
2. Orders of a physician; or
3. Locally approved medical protocols;

(c) Maintain patient confidentiality;

(d) Meet the requirements for certification or recertification pursuant to:

1. 902 KAR 13:050 for an EMT, EMT-instructor or EMT-instructor trainer; or
2. 902 KAR 13:110 for an EMT-first responder or EMT-first responder instructor;

(e) Meet the requirements for an applicant for certification pursuant to 902 KAR 13:020; or

(f) Meet the requirements for an EMT-instructor or EMT-instructor trainer pursuant to 902 KAR 13:070;

(6)(a) Reproduces or reconstructs, or attempts to reproduce or reconstruct, a portion of an emergency medical technician examination for the purpose of assisting another to cheat on the examination; or

(b) Disseminates information for purposes of reproduction or reconstruction of a portion of an emergency medical technician examination in order to assist another to cheat on the examination;

(7) Cheats, or assists another to cheat, on an examination for certification, recertification, challenge, or reentry;

(8) Does not meet the qualifications, minimum requirements, special requirements, and basic competency areas outlined in the "Emergency Medical Technician/Basic Functional Position Description". The "Emergency Medical Technician/Basic Functional Position

Description", April 1993, is incorporated by reference, and may be inspected, copied, or obtained from the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday;

(9) Issues a check for a certificate on an invalid account or an account which does not have sufficient funds to pay the fee for the certificate required by 902 KAR 13:030;

(10) Discriminates in the provision of services on the basis of race, sex, age, religion, color, creed, or national origin;

(11) Practices outside or beyond the scope of his level of certification, or represents he is qualified at a level other than his current certification;

(12) Takes or possesses, without authorization, for personal use or gain, medicines, supplies, equipment, or personal items of a patient;

(13) Materially alters a certificate, or uses or possesses an altered certificate;

(14) Obtains or attempts to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge; or assists another to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge.

(15) Falsifies an application for certification or recertification;

(16) Falsifies a patient record;

(17) Has had an EMT, EMT-first responder, EMT-first responder instructor, EMT-instructor, EMT-instructor trainer, or equivalent certificate denied, suspended, revoked, or restricted in another state while holding a Kentucky certificate;

(18) Uses or attempts to use his certificate to obtain or attempts to obtain any benefit to which he is not entitled by duress, coercion, fraud, or misrepresentation;

(19) Is not at least eighteen (18) years of age at the time of application for certification;

(20)(a) Has been convicted of a felony or misdemeanor described in KRS 335B.010(4); or

(b) Has been convicted of other crimes directly related to the ability of a person to perform the duties of an EMT.

Section 2. Restricted Certificate. The cabinet may restrict the certificate of a person who is certified or obtains certification as an EMT or EMT-first responder while incarcerated in a prison, correctional facility, reformatory, or jail to function as an EMT or EMT-first responder only within that facility during the period of incarceration.

Section 3. Cease and Desist Order. The cabinet may issue an order directing a person to immediately cease and desist functioning as an EMT, EMT-first responder, EMT-first responder instructor, EMT-instructor, or EMT-instructor trainer if the cabinet has reasonable cause to believe that the person may cause harm or create an imminent danger to the public if his certificate is not denied, suspended, revoked, or restricted.

Section 4. Notice Procedures. (1) The cabinet shall notify a person by certified mail sent to his last known address of record of an action to deny, revoke, suspend, or restrict his certificate, and of his right to request a hearing. The written notice of the cabinet shall comply with KRS 13B.050. Failure of an EMT to notify the cabinet of a change of address or to accept or claim the certified notice at his last known address of record shall not:

(a) Delay or negate the disciplinary action;

(b) Change the effective date of the action; or

(c) Suspend, alter, or negate the time period allowed to respond to the action or request a hearing.

(2) The written notice shall state the substance of each offense charged with sufficient detail to reasonably apprise him of the nature, time, and place of the violation.

Section 5. Hearings. (1) Administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~An applicant or certificate holder shall have twenty (20) days to request, in writing, a hearing after written notice is given by the cabinet of its decision to deny, suspend, revoke, or restrict a certificate.~~]

(2) [~~The applicant or certificate holder shall have the right to:~~

~~(a) Be present in person;~~

~~(b) Be represented by counsel;~~

~~(c) Present evidence or witnesses on his behalf; and~~

~~(d) Be heard in opposition to the charges which may be instituted; and~~

~~(e) Cross-examine witnesses.~~

~~(3)~~] The hearing shall [~~may~~] be conducted by a hearing officer appointed by the cabinet in accordance with 902 KAR 1:400.

[~~(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.~~

~~(5) The hearing officer shall make written findings of fact and conclusions of law, and enter a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.~~]

(3) [~~(6)~~] If an applicant or certificate holder does not request a hearing within twenty (20) days of the written notice of intended action, the action shall be final.

(4) [~~(7)~~] If a person receives a certificate and his check for the certification fee is later returned unpaid due to an invalid account or insufficient funds, the certificate shall be automatically suspended until:

(a) The fee is paid in full by cash, certified check, or money order; or

(b) The person requests a hearing on the suspension.

(5) [~~(8)~~] The cabinet may publish in the EMS newsletter:

(a) The name of a person whose certificate has been denied, suspended, revoked, or restricted and the time period involved;

(b) The administrative regulation violated; and

(c) The nature of the violation.

(6) [~~(9)~~] If a person is employed as an EMT, EMT-first responder, EMT-first responder instructor, EMT instructor, or EMT-instructor trainer at the time a final decision is made by the cabinet to deny, suspend, revoke, or restrict a certificate, the cabinet may notify the employer of the action taken.

(7) [~~(10)~~] If a person fails to abide by a decision of the cabinet to deny, suspend, revoke, or restrict his certificate, the person shall be in violation of KRS 211.962 and may be charged with a Class A misdemeanor under KRS 211.990(5).

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 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, 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. 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: 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: 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 the requirements of KRS 13B.050.

(8) Assessment of expected benefits: This administrative regulation provide uniform standards for disciplinary actions and administrative hearings in the cabinet.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have no effect on public health or the environmental welfare of any geographical area of Kentucky.

(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: None

(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 all 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? 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.

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 13:120. Emergency medical technician automatic and semiautomatic defibrillation training program.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS Chapter 13B, 211.964, EO 95-79

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt rules and administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish a new emergency medical technician (EMT) procedure, automatic and semiautomatic cardiac defibrillation, and to establish requirements for training, examinations and authorization. This will be a restrictive procedure while the EMT is employed with an approved ambulance service provider; or with an authorized fire, police or rescue (i.e., public safety) organization having a written affiliation agreement with an approved ambulance service within the same geographic service area. Executive Order 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.

Section 1. Training Course Requirements. The automatic and semiautomatic defibrillation training course, utilizing automatic external or semiautomatic external defibrillation (AED/SAED) equipment, shall:

(1) Be coordinated by a licensed ambulance service that has filed an appropriate application to and has been approved by the cabinet for coordinating the training, and the ambulance service shall assume all responsibilities required for conducting the AED/SAED training course;

(2) Include the curriculum developed by the Kentucky Emergency

Medical Services Advisory Committee and approved by the Emergency Medical Services Branch of the cabinet. A copy of this publication is incorporated [~~, included~~] by reference and [~~as if fully incorporated herein,~~] shall be on file in the office of the Commissioner [~~Emergency Medical Services Branch~~], Department for Health Services, Cabinet for Health Services [~~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. An equivalent curriculum developed by an outside source, but meeting the course criteria established by the cabinet, may be submitted to and be considered for approval by the cabinet;

(3) Be a minimum of seven (7) hours in duration, presented in two (2) sessions over at least two (2) days;

(4) Utilize equipment, tests, and other materials approved by the cabinet;

(5) Not be started until all equipment and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(6) Not share equipment between courses unless such equipment is available equally to all defibrillation classes;

(7) Be taught by an instructor, at a ratio of one (1) instructor per six (6) students, approved by the cabinet pursuant to Section 2 of this administrative regulation;

(8) Have a medical director under written contract with the ambulance service provider, who shall review and approve all instruction curriculum and instructors, and who shall be present and participate as appropriate during the training program course;

(9) Have an appropriate number of assistant instructors available for practice sessions so that there are no more than six (6) additional students per assistant. A person meeting the specifications described in Section 2 of this administrative regulation, or an EMT who has completed the AED/SAED training program and is currently authorized and active in performing AED/SAED procedures, may be used as an assistant for practice sessions;

(10) Have a class certification number assigned by the cabinet;

(11) Not permit any absenteeism, or the student shall repeat the entire course;

(12) Not permit any student to be on call during training sessions; and

(13) Require the instructor at the end of each course to submit the following to the ambulance service provider and to the EMS Branch of the cabinet:

(a) A list of names, including EMT certification numbers, of those students who have successfully completed the course requirements for authorization to perform automatic and semiautomatic cardiac defibrillation; and

(b) The name of the ambulance service with which these EMTs will be working, or affiliated.

(c) The ambulance service shall notify any affiliated public safety organization in writing of each affiliated EMT who has successfully completed the course and who is authorized to perform AED/SAED procedures according to the ambulance service medical director protocols.

Section 2. Automatic and Semiautomatic Cardiac Defibrillation Instructors. No person shall hold himself out as an instructor for EMTs in automatic and semiautomatic cardiac defibrillation unless he has been approved by the cabinet to teach the course. One (1) of the following shall be eligible for such approval upon submission of appropriate documentation to the cabinet:

(1) An EMT who is a certified EMT-instructor and who is authorized and is currently active in performing AED/SAED procedures;

(2) A paramedic, registered nurse or physician, each of whom is a currently certified advanced cardiac life support (ACLS) instructor.

Section 3. Requirements for Each Eligible Trainee Applicant. Each EMT who is employed (full time, part time, paid or volunteer) with an ambulance service or affiliated fire department, police department, or rescue squad, and who responds on an ambulance, fire apparatus, police vehicle, rescue squad or designated first response unit, shall provide to the AED/SAED lead class instructor:

(1) Proof of current EMT certification. If EMT certification expires, the eligibility as an applicant for AED/SAED training also lapses until the EMT is recertified;

(2) Proof of current cardiac life support skills, (e.g., a current American Heart Association or American Red Cross CPR certification card). Included shall be the provision of an acceptable cardiopulmonary resuscitation (CPR) strip, that is signed by an EMT-instructor to verify that the strip was produced by the student applicant within thirty (30) days prior to the commencement date of the class; and

(3) Approval to enroll from the student's emergency medical (ambulance) service provider director and the emergency medical (ambulance) service medical director (EMS-MD).

Section 4. EMT Automatic and Semiautomatic Cardiac Defibrillation Training Program Examination. The cabinet shall prescribe the format and content of the authorization examination, which shall consist of two (2) parts:

(1) Written test. At the end of this course, the student shall demonstrate competency with a written test scoring eighty (80) percent or better that includes the following four (4) enabling objectives:

(a) The student shall identify the function, operation, and proper maintenance of the automatic external devices/shock advisory (semiautomatic) devices, hereafter referred to as AED/SAED.

(b) The student shall define patient assessment, and care and treatment of the sudden death victim.

(c) The student shall list safety measures when using an AED/SAED.

(d) The student shall repeat standing orders and state automatic and semiautomatic cardiac defibrillation training program requirements.

(2) Practical test. At the end of this course, the student shall pass a practical examination managing a simulated cardiac arrest patient using defibrillation that includes the following five (5) enabling objectives:

(a) The student shall demonstrate control of the simulated emergency scene and shall direct the resuscitation efforts.

(b) The student shall demonstrate correct use of standing orders in a simulated cardiac arrest by correctly defibrillating a manikin within ninety (90) seconds of arrival at the manikin's side.

(c) The student shall demonstrate safe use of the AED/SAED and answer questions about the controls, disposable supplies, maintenance, and device "trouble shooting" techniques.

(d) The student shall give an appropriate voice documentation of events at the scene.

(e) The student shall demonstrate appropriate assessment and care of the patient before, during and after defibrillation.

(3) Examiners. AED/SAED instructors approved by the cabinet pursuant to Section 2 of this administrative regulation shall be used as examiners for AED/SAED course practical examinations. An instructor who is employed by the ambulance service for whom the AED/SAED course is conducted shall not be used as an examiner in the practical examination of the course.

(4) Failure of examination and eligibility for retesting.

(a) A student who fails one (1) component of the final examination, written or practical, may be allowed one (1) retest upon recommendation by the instructor and with the approval of the ambulance service medical director.

(b) Failure to successfully pass one (1) retest shall require that the student retake the entire training program course before becoming authorized to perform AED/SAED procedures.

Section 5. Authorization and Continuation of Authorization. (1)

The ambulance service or affiliated EMT is authorized to perform AED/SAED procedures by the medical director of the approved ambulance service.

(2) Besides having the approval of the ambulance service medical director, in order to continue the authorization for performance of AED/SAED procedures, the EMT shall during his period of authorization, provide proof to include:

(a) Current certification as an emergency medical technical;

(b) Continued employment and response as an ambulance attendant with an approved AED/SAED ambulance service provider, or a public safety organization service which has a written affiliation agreement with an approved AED/SAED ambulance service within the same geographic service area;

(c) A practical skills review every ninety (90) days to be documented by the EMS-medical director or the EMS-MD designee. This practical skills review shall address defibrillation as well as basic life support skills.

(3) The continuing medical education classes shall include, but are not limited to:

(a) Equipment drills with their specific auto or semiautomatic defibrillater; and

(b) Knowledge of current standing orders.

(4) The following are not eligible for credit as in-service training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities;

(b) Instruction in material, techniques or procedures not approved to be performed by an EMT authorized to perform automatic and semiautomatic cardiac defibrillation.

(5) Evidence of AED/SAED continuing education shall be submitted to and maintained on file at the ambulance service with which the EMT is employed, or affiliated, subject to inspection by a representative of the Emergency Medical Services Branch of the cabinet.

(6) Each subject or training course claimed shall be signed by the instructor of the subject or course.

(7) The qualifications for instructors who may provide in-service and continuing education for the EMT authorized to perform automatic and semiautomatic defibrillation are the same as those identified under Section 2 of this administrative regulation.

Section 6. Denial of Authorization for the EMT to Perform Automatic and Semiautomatic Defibrillation Procedures. The denial of authorization for the EMT to perform AED/SAED procedures may be put into effect by the EMS-MD or the cabinet for any of the following reasons:

(1) The medical director has removed permission for the EMT to perform AED/SAED procedures and has made it known to the ambulance service provider, with subsequent notice having been made by the ambulance service provider to the affiliated public safety organization, and to the EMS Branch of the cabinet, due to any reason that has been substantiated to be detrimental to patient care or to other emergency medical service personnel;

(2) The expiration of the individual's EMT certification;

(3) The individual has discontinued employment with an approved automatic or semiautomatic defibrillation ambulance service provider, or affiliated public safety organization;

(4) The previously approved ambulance service provider with whom the EMT works or is affiliated, has been denied approval to provide automatic or semiautomatic defibrillation services by either having had its ambulance service license revoked, or it no longer has a medical director under written contract; or

(5) The EMT has had his EMT certification revoked, due to having committed an infraction as specified under 902 KAR 13:090, Section 1, disciplinary actions.

Section 7. Hearing Process for an EMT Denied Authorization. When an EMT has been denied authorization to perform AED/SAED procedures:

(1) At the local level by the EMS-MD, a hearing process shall be assured for the EMT in the EMS-MD/ambulance service provider contract; or

(2) At the state level due to the EMT certification being revoked by the EMS Branch of the cabinet, a hearing process for the EMT shall be in accordance with the requirements of 902 KAR 1:400. [~~902 KAR 13:090, Section 2.~~]

Section 8. Utilization of Services. No ambulance service provider or affiliated public safety organization shall employ, utilize, permit the operation of, or advertise that said provider employs an EMT authorized to perform AED/SAED procedures, unless the provider is approved by the cabinet to provide AED/SAED services. An approved AED/SAED ambulance service provider shall:

(1) Have a written agreement with a medical director to provide medical supervision and control of the AED/SAED authorized EMT who is in the employ of the provider, and the medical director shall:

(a) Be a licensed physician in the Commonwealth of Kentucky;

(b) Be familiar with ACLS standards, and by January 1, 1995 become ACLS certified;

(c) Review and approve all AED/SAED instruction curriculum, and the instructors for the training program;

(d) Participate in the AED/SAED training program, including presentation of lectures and assisting in student practice sessions as appropriate;

(e) Approve each EMT who is to be a student trainee in the AED/SAED training program;

(f) Supply written authorization to the EMTs for standing orders relating to performance of AED/SAED procedures;

(g) Supervise the continuing education and quarterly evaluations of each EMT authorized to perform AED/SAED procedures;

(h) Review patient case records as established by a quality assessment plan, to include review of written documentation and use of electronic voice and electrocardiogram (ECG) recordings of treatment (only when defibrillation machine used) performed by the authorized EMTs in the field;

(i) Exercise authority as appropriate to remove permission for EMT to perform AED/SAED procedures as referenced in Section 6(1) of this administrative regulation, including the provision of written notice to the EMT and ambulance service involved; and

(j) Assure the provision of a hearing process in accordance with Section 7(1) of this administrative regulation.

(2) Be licensed minimally as a basic life support ambulance service in the Commonwealth of Kentucky; and

(3) Submit required information to the EMS Branch of the cabinet prior to the commencement of any AED/SAED training program for EMTs employed by the emergency medical services provider, and at least annually thereafter.

Section 9. Affiliated Public Safety Organization. An EMT employed (paid or volunteer) by a public safety organization shall not perform AED/SAED procedures unless the public safety organization has entered into a written affiliation agreement with an approved ambulance service within the same geographic service area.

(1) Each affiliated EMT applicant for AED/SAED training shall be approved by the ambulance service director and medical director;

(2) The affiliated EMT shall be under the medical control of and may perform AED/SAED procedures only by authorization from the ambulance service medical director;

(3) The public safety organization shall agree to comply with the requirements of this administrative regulation and all other terms agreed upon between the public safety organization and the approved ambulance service, as specified in the written affiliation agreement;

(4) The terms in the written affiliation agreement shall specify the responsibilities each party shall assume and shall include a plan for

implementation of coordinated response activities in order to maximize appropriate patient care.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 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, 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. 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: 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: 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 the requirements of KRS 13B.050.

(8) Assessment of expected benefits: This administrative regulation provide uniform standards for disciplinary actions and administrative hearings in the cabinet.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have no effect on public health or the environmental welfare of any geographical area of Kentucky.

(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: None

(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? No. Tiering was not applied because this administrative regulation addresses only 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? 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.

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

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS Chapter 13B, 211.964, EO 95-

79

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt rules and administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish the training course requirements for a new emergency medical technician (EMT) procedure, the maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion as described in 902 KAR 13:080; and to establish requirements related to medical director authorization for the EMT to perform the procedures while employed with an approved ambulance service provider. Executive Order 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.

Section 1. Training Course Requirements. The training course shall:

(1) Be designed primarily for the purpose of interfacility or facility to home transportation of a stable patient having a preestablished peripheral I.V. infusion;

(2) Be designed so that peripheral will be understood to mean I.V. entry locations limited to areas on the arms, hands or feet of the patient;

(3) Be designed for instruction related to the maintenance and discontinuation of a preestablished peripheral I.V. infusion limited to an infusion of saline (up to nine-tenths (0.9) percent sodium chloride); D5W (a five (5) percent solution of dextrose in water); lactated Ringer's solution; or any combination of saline, dextrose or Ringer's solution. No infusion solution shall have had other additives included at the place of manufacture or at the initiating facility, nor shall a pump be required for the administration of the infusion;

(4) Be designed so that maintenance shall include adjustment of the infusion flow rate consistent with the physician's orders; the addition of identical infusion solution, if required, by changing the infusion solution container; and monitoring for detection of adverse patient signs and symptoms;

(5) Be designed so that discontinuation, if ordered by the medical director, shall include the stopping of the infusion flow and removal of the cannula. If the cannula is removed, a sterile dressing shall be applied to the infusion entry site;

(6) Be coordinated by an ambulance service that has filed an appropriate application and has been approved by the cabinet for coordinating the training. The approved ambulance service shall assume all responsibilities required for conducting the training course;

(7) Include the curriculum developed by the Kentucky Cabinet for Health Services [~~Human Resources~~] Emergency Medical Services Branch and the Emergency Medical Services Advisory Committee. A copy of this curriculum, which is incorporated by reference as if fully incorporated therein, shall be on file in the office of the Commissioner, Emergency Medical Services Branch, Department for Health Services, Cabinet for Health Services [~~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; or

(8) Include a cabinet equivalent curriculum developed by an outside source, but meeting the cabinet established criteria of this administrative regulation, that has been submitted to and approved by the cabinet;

(9) Be a minimum of four (4) hours in duration;

(10) Utilize equipment, tests, and other materials approved by the cabinet;

(11) Not be started until all equipment and other materials specified are available in proper quantities, in proper working condition, and placed in secure storage;

(12) Not share equipment between courses unless such equipment is available equally to all classes for training EMTs in the maintenance and discontinuation of a preestablished peripheral I.V. infusion;

(13) Have a medical director under written contract with the ambulance service provider who shall review and approve all instruction curriculum, instructors and examiners; and who shall be present and participate as appropriate during the training program course;

(14) Be taught by an instructor, at a ratio of one (1) instructor per six (6) students, approved by the medical director pursuant to Section 2 of this administrative regulation;

(15) Have an appropriate number of assistant instructors available for practice sessions so that there are no more than six (6) additional students per assistant. An individual meeting the criteria specified for an instructor in Section 2 of this administrative regulation, or an EMT who has completed the training program for preestablished peripheral I.V. maintenance and discontinuation, and is currently authorized to perform the procedures, may be used as an assistant for practice sessions;

(16) Have a class certification number assigned by the cabinet;

(17) Not permit any absenteeism, or the student shall repeat the entire course;

(18) Not permit any student to be on call during training sessions; and

(19) Require the lead instructor at the end of each course to submit the following to the ambulance service provider and to the EMS Branch of the cabinet:

(a) A list of names and the EMT certification numbers of those students who have participated in the course, with identification of those who have successfully completed the training in procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion in accordance with limitations established by the cabinet; and

(b) The name of the ambulance service for which these EMTs will be working.

Section 2. Instructors and Examiners For Training EMTs in the Maintenance and Discontinuation of a Preestablished Peripheral I.V. Infusion. One (1) of the following currently certified or licensed persons shall be eligible for the training and testing of the EMTs upon approval of the medical director:

(1) A paramedic;

(2) Registered nurse; or

(3) A physician.

Section 3. Requirements For Each Eligible Trainee Applicant. Each eligible trainee applicant who is employed with an ambulance service shall provide to the lead class instructor:

(1) Proof of current Kentucky EMT certification. If EMT certification expires, the eligibility as an applicant for training in the maintenance and discontinuation of a preestablished peripheral I.V. infusion also lapses until the EMT is recertified; and

(2) Approval to enroll from the student's emergency medical (ambulance) service director and the emergency medical (ambulance) service medical director (EMS-MD).

Section 4. Course Examination. The cabinet shall prescribe the format and content of the examination, which shall consist of two (2) parts:

(1) Written test. At the end of this course, the student shall demonstrate competency with a written test scoring eighty (80) percent or better that includes the following eleven (11) enabling objectives:

(a) The student shall be able to determine the type of preestablished infusion for which he is authorized to maintain and discontinue. In addition, the EMT shall be able to identify the common patient conditions and signs and symptoms that may require maintenance or potential treatment by personnel trained beyond the EMT level;

(b) The student shall define patient assessment, and care and

treatment of the patient with a preestablished peripheral infusion;

(c) The student shall be able to list the most common types and sizes of I.V. fluid containers, and describe the uses and differences between micro and macro administration sets;

(d) The student shall be able to list the basic values needed to calculate the flow rate of the infusion solution to be maintained;

(e) The student shall be able to list the procedures required for adjusting an infusion flow rate from provided data;

(f) The student shall be able to list the procedures required for adding identical solution to the infusion;

(g) The student shall be able to list the common causes and patient signs and symptoms that may indicate a need for the discontinuation of a peripheral I.V. infusion;

(h) The student shall be able to list the steps necessary to discontinue a preestablished peripheral I.V. infusion;

(i) The student shall be able to list the procedures required for controlling bleeding and applying a sterile dressing to the wound when an I.V. cannula has been removed from the infusion administration site;

(j) The student shall be able to identify the common causes and patient signs and symptoms that may indicate the need for notification of the medical director or another on-line medical control physician; and

(k) The student shall describe personal safety precautions to be followed while performing the maintenance and discontinuation of a preestablished peripheral I.V. infusion.

(2) Practical test. At the end of this course, the student shall pass a practical examination managing a patient with a preestablished peripheral I.V. infusion, utilizing the following
eleven (11) enabling objectives:

(a) The student shall demonstrate control of the simulated scene and shall correctly determine whether or not he is authorized to maintain the preestablished I.V. infusion. In addition, the EMT shall correctly identify whether or not the patient's condition and signs and symptoms may require the maintenance or potential treatment by personnel trained beyond the EMT level;

(b) The student shall demonstrate, from data provided, correct evaluation of the flow rate of the preestablished peripheral I.V. infusion and whether or not the flow rate needs adjusting;

(c) The student shall demonstrate correct evaluation of the flow rate of the preestablished peripheral I.V. infusion after the patient has been moved from one level to another, as would be the case in moving the patient from the pick-up location to securing the patient and stretcher in the patient compartment of the ambulance, and whether or not the flow rate needs adjusting;

(d) If it is determined that the flow rate needs adjusting in paragraph (b) or (c) of this subsection, the student demonstrates a correct adjustment;

(e) The student shall demonstrate correct procedures for adding identical solution to the infusion;

(f) The student shall be able to verbalize and understand the common causes and patient signs and symptoms that may indicate a need for the discontinuation of a preestablished I.V. infusion;

(g) The student shall demonstrate correct discontinuation of a preestablished I.V. infusion;

(h) The student shall demonstrate correct procedures for controlling the bleeding and applying a sterile dressing to the infusion entry site from which the I.V. cannula has been removed;

(i) The student shall be able to verbalize and understand the common causes and patient signs and symptoms that may indicate a need for the notification of the medical director or another on-line medical control physician;

(j) The student shall demonstrate appropriate assessment and care of the patient before, during and after the maintenance of a preestablished I.V. infusion; and

(k) The student shall demonstrate appropriate safety precautions before, during and after the maintenance of a preestablished I.V. infusion.

Section 5. Failure of Examination and Eligibility For Retesting. (1) A student who fails one (1) component of the final examination, written or practical, may be allowed one (1) retest upon recommendation by the instructor and with the approval of the ambulance service medical director.

(2) Failure to successfully pass one (1) retest shall require that the student retake the entire training program course before becoming authorized to perform procedures for the maintenance and discontinuation of a preestablished I.V. infusion.

Section 6. Authorization and Continuation of Authorization. (1) Upon the effective date of this administrative regulation, an EMT shall not perform the maintenance and discontinuation of a preestablished peripheral I.V. infusion during an interfacility or facility to home transportation of a patient, unless the EMT has:

(a) Been trained according to the requirements of this administrative regulation; and

(b) Is an employee of an approved ambulance service.

(2) Authorization for the EMT to perform maintenance and discontinuation of a preestablished peripheral I.V. infusion shall be granted by the medical director (EMS-MD) of the approved ambulance service.

(3) In addition to having approval from the ambulance service medical director, in order to continue the authorization for maintenance and discontinuation of a preestablished peripheral I.V. infusion, the EMT shall during his period of authorization provide proof of:

(a) Current Kentucky certification as an emergency medical technician;

(b) Continued employment with an ambulance service approved to provide services for the maintenance and discontinuation of a preestablished I.V. infusion; and

(c) Having completed a practical skills review every six (6) months to be documented by the EMS-medical director or the EMS-MD designee. This practical skills review shall address the demonstration of correct patient assessment, care and treatment of a patient with a preestablished peripheral I.V. infusion as addressed in the practical test of the initial training course of this administrative regulation.

(4) The continuing medical education classes shall include, but are not limited to:

(a) Drills that utilize the skills necessary to evaluate the maintenance and discontinuation of a preestablished I.V. infusion, as addressed in the practical test of the initial training course of this administrative regulation; and

(b) Knowledge of current standing orders.

(5) The following are not eligible for credit as in-service training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency or nonemergency responses, or similar actual activities;

(b) Instruction in material, techniques or procedures not approved to be performed by an EMT authorized to maintain and discontinue a preestablished peripheral I.V. infusion.

(6) Evidence of continuing education related to the maintenance and discontinuation of a preestablished peripheral I.V. infusion shall be submitted to and maintained on file at the ambulance service with which the EMT is employed, and be subject to inspection by a representative of the Emergency Medical Services Branch of the cabinet.

(7) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(8) The qualifications for instructors who may provide in-service and continuing education for the EMT authorized to maintain and discontinue a preestablished I.V. infusion are the same as those identified under Section 2 of this administrative regulation.

Section 7. Denial of Authorization For the EMT To Maintain and

Discontinue a Preestablished I.V. Infusion. The denial of authorization for the EMT to perform procedures for the maintenance and discontinuation of a preestablished I.V. infusion may be put into effect by the EMS-MD or the cabinet for any of the following reasons:

(1) The medical director has removed permission for the EMT to perform procedures for the maintenance and discontinuation of preestablished I.V. infusion, and has made it known to the EMT and the ambulance service involved, with subsequent notice having been made by the ambulance service to the EMS Branch of the cabinet, due to any reason that has been substantiated to be detrimental to patient care or to other emergency medical service personnel;

(2) The expiration of the individual's EMT certification;

(3) The individual has discontinued employment with an ambulance service approved for providing procedures in the maintenance and discontinuation of a preestablished peripheral I.V. infusion;

(4) The previously approved ambulance service provider with whom the EMT works has been denied approval to provide maintenance and discontinuation of a preestablished I.V. infusion service by either having had its ambulance service license revoked, or it no longer has a medical director under written contract; or

(5) The EMT has had his EMT certification revoked, due to having committed an infraction as specified under 902 KAR 13:090.

(6) Administrative hearings on any appeal of denial shall be conducted in accordance with 902 KAR 1:400.

Section 8. Utilization of Services. No ambulance service provider shall employ, utilize, permit the operation of, or advertise that said provider employs an EMT authorized to perform procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion during interfacility or facility to home patient transportation, unless the provider is approved by the cabinet to provide these services. An approved ambulance service provider shall:

(1) Be licensed minimally as a basic life support (i.e., conforming emergency) ambulance service in the Commonwealth of Kentucky;

(2) Assure that in a prehospital setting where the patient has a preestablished I.V. infusion, that the patient is transported to the nearest appropriate medical facility according to the requirements specified in local protocol;

(3) Develop and maintain a written agreement with the commonly used initiating facilities for interfacility transfers, such as hospital to hospital and skilled nursing facility to hospital, and for transfers from a facility to a private home that specifies the responsibilities each service shall assume in order to provide appropriate staffing and equipment to meet the needs of the patient during the ambulance transportation; and

(4) Have a written agreement with a medical director to provide medical supervision, control and performance authorization of the EMT who is in the employ of the provider (whether the EMT is paid or is a volunteer). The medical director shall:

(a) Be a licensed physician in the Commonwealth of Kentucky;

(b) Review and approve all instruction curriculum, instructors and examiners for the maintenance and discontinuation of a preestablished peripheral I.V. infusion training program;

(c) Participate in the training program, including presentation of lectures and assisting in student practice sessions as appropriate;

(d) Approve each EMT who is to be a student trainee in the training program;

(e) Supply written authorization of standing orders relating to performance of procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion;

(f) Supervise the continuing education and six (6) month evaluations of each EMT authorized to perform procedures for the maintenance and discontinuation of a preestablished peripheral I.V. infusion;

(g) Review, per an established quality assessment plan, the written documentation of procedures performed by each EMT related to the maintenance and discontinuation of a preestablished peripheral I.V. infusion while the EMT is in the employ of the ambulance service for which the EMS-MD is under written contract;

(h) Exercise authority to remove permission for the EMT to perform procedures for the maintenance and discontinuation of a preestablished I.V. infusion as referenced in Section 6(1) of this administrative regulation, including the provision of written notice to the EMT and ambulance service involved; and

(5) Submit required information to the EMS Branch of the cabinet prior to the commencement of any EMT training program for the maintenance and discontinuation of a preestablished peripheral I.V. infusion, and at least annually thereafter.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 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, 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. 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: 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: 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 the requirements of KRS 13B.050.

(8) Assessment of expected benefits: This administrative regulation provide uniform standards for disciplinary actions and administrative hearings in the cabinet.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have no effect on public health or the environmental welfare of any geographical area of Kentucky.

(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: None

(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? No. Tiering was not applied because this administrative regulation addresses only 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? 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.

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 Environmental Health and Community Safety
(Amendment)

902 KAR 15:010. Mobile homes.

RELATES TO: KRS 219.310 to 219.410, 219.991(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 219.310 to 219.410 and 219.991(2) directs the Cabinet for Health Services [~~Human Resources~~] to regulate mobile home parks in Kentucky. This administrative regulation establishes standards for park construction and layout; sanitary standards for operation and other matters necessary to insure a safe and sanitary mobile home park operation. Executive Order 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.

Section 1. Definitions. In addition to the definitions set forth in KRS 219.320, the following definitions shall apply:

(1) "Mobile home stand" means that part of a mobile home lot which has been reserved for the placement of a mobile home and appurtenant structures or additions.

(2) "Park driveway" means a private driveway which affords principal means of access between the park street and individual mobile home lots.

(3) "Park street" means the paved portion of a roadway between curbs or, if not paved, the surfaced area separating lots.

(4) "Sewer connection" means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe of the sewer system serving the mobile home park.

(5) "Water connection" means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the mobile home.

Section 2. Application for Construction Permit. Application for a permit to construct or alter a mobile home park shall be made in writing on form DFS-317 - Application for a Permit to Construct or Alter a Mobile Home Park or Recreational Vehicle Park to the cabinet and shall contain:

(1) The name and address of the applicant;

(2) The name and location of the park;

(3) The number and size of all mobile home lots;

(4) The number of lights and wattage;

(5) The source of water supply;

(6) The type of sewage disposal;

(7) The method of solid waste disposal;

(8) The source of electrical service;

(9) Evidence of compliance with local zoning laws; and

(10) Be accompanied by a fee established by 902 KAR 45:120, Inspection fees; permit fees; food service establishments, hotels, mobile home and recreational vehicle parks.

Section 3. Submission of Construction Plan. Each application for a permit to construct or alter a mobile home park shall be accompanied by a complete plan, drawn to scale, submitted in triplicate, of the proposed park or alteration. The plan shall show all existing and proposed facilities including:

(1) The area and dimensions of the tract of land being developed;

(2) The number, location and size of all mobile home lots;

(3) The area within each mobile home lot intended for location of a mobile home and setback distances;

(4) A detailed drawing of the foundation for the placement of the mobile home stand within the mobile home lot;

(5) The location and width of roadways, driveways and walkways;

(6) The number, location and size of all off-street automobile parking spaces;

(7) The location of park street lighting and electrical system;

(8) A detailed drawing of the water supply, if source is other than public;

(9) A detailed drawing of the sewage disposal facilities, including specifications;

(10) A detailed drawing of the refuse storage facilities;

(11) The location and size of water and sewer lines, and riser pipes;

(12) The size and location of any playground areas within the park, if provided; and

(13) A separate floor plan of all buildings and other improvements constructed or to be constructed within the mobile home park including a plumbing riser diagram.

Section 4. Location and General Layout Standards. (1) Every mobile home and mobile home park shall be located on a well-drained area, not subject to reoccurring flooding, and the premises shall be properly graded to prevent the accumulation of storm or other waters.

(2) Each mobile home or lot shall be numbered and displayed in some systematic order.

(3) Each mobile home lot shall contain a minimum of 4,000 (approximately forty (40) x 100 feet recommended) square feet.

(4) Mobile homes shall be separated from each other and from other buildings and structures by at least fifteen (15) feet. An accessory structure which has a horizontal area exceeding twenty-five (25) square feet, if attached to a mobile home or located within less than fifteen (15) feet of the mobile home shall, for purposes of all separation requirements, be considered to be part of the mobile home.

(5) All mobile homes shall be located at least twenty-five (25) feet from any park property boundary line abutting upon a public street or highway and at least ten (10) feet from other park property boundary lines.

(6) There shall be a minimum distance of twenty (20) feet between an individual mobile home and adjoining pavement of a park street, or common parking area or other common areas.

(7) If a park provides a playground area, it shall be easily accessible to all park residents and fenced or otherwise rendered free of traffic hazards.

(8) All lots shall abut upon a park street. For a two (2) way park street the minimum width shall be eighteen (18) feet and, if parking is permitted, the width shall be at least twenty-seven (27) feet for one (1) side parking and thirty-six (36) feet for both side parking. For a one (1) way park street the minimum width shall be fourteen (14) feet and, if parking is permitted, the width shall be at least twenty-three (23) feet for one (1) side parking and thirty-two (32) feet for both side parking.

(9) Park streets, driveways and walkways shall be all weather construction, maintained in good condition, have natural drainage, relatively free of dust and shall be maintained free of holes.

(10) The area of the mobile home stand shall be improved to provide an adequate foundation for the placement of the mobile home. The mobile home stand shall not heave, shift or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration or other forces acting on the superstructure.

Section 5. Lighting within Park. A minimum equivalent to a 175 watt mercury vapor type light shall be provided at park entrances, intersections and at intervals of 200 feet within the park.

Section 6. Park Water Supply. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. If a public water supply of a municipality or a water district is not available, the supply for the park shall be developed and approved pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet; except, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the park supply shall be discontinued.

(2) The water supply shall be capable of supplying a minimum of 150 gallons per day per mobile home lot.

(3) No physical connection shall be made between an approved public water supply and unapproved water supply.

(4) Water distribution lines and connections shall comply with the state plumbing code.

Section 7. Park Sewage and Waste Disposal. (1) All sewage and waste matter shall be disposed of into a public sewer system, if available. If a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed and operated in accordance with the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet; except if a public sewer system subsequently becomes available, connections shall be made to it and the park sewer system shall be discontinued.

(2) The sewer service connection between the mobile home and the sewer riser opening shall have a nominal inside diameter of at least three (3) inches with a slope of at least one-fourth (1/4) inch per foot. All joints shall be watertight.

(3) The sewer outlet shall be capped when not in use.

(4) Mobile home park sewer systems and connections shall comply with the state plumbing code.

Section 8. Storage, Collection and Disposal of Park Refuse. (1) The permit holder shall be responsible for storage and disposal of refuse.

(2) The storage, collection and disposal of refuse in the park area shall be conducted to not create a health, safety or fire hazard, rodent harborage, insect breeding area or cause air pollution.

(3) All refuse shall be stored in flytight, watertight, rodent proof containers, which shall be conveniently located near each mobile home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse.

(4) Approved container storage location shall be provided and shall be designed and maintained to not create a nuisance.

(5) All refuse containing garbage shall be collected at least once a week or more often, if necessary. If suitable collection service is not available from municipal or private agencies, the owner or operator of the park shall provide this service. All refuse shall be collected and transported in covered, leak-proof containers or vehicles.

(6) All refuse and waste collected at a park shall be disposed in a safe and sanitary manner approved by the Natural Resources and Environmental Protection Cabinet.

Section 9. Insect and Rodent Control within the Park. (1) Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Approved extermination methods and other measures to control insects and rodents shall be used.

(2) Parks shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(3) Storage areas shall be maintained to prevent rodent harborage: lumber, pipe and other building materials shall be stored at least one (1) foot above the ground.

(4) If the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.

(5) Parks shall be maintained to prevent the growth of ragweed,

poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health. Parks shall be maintained free of heavy vegetative growth of any description.

Section 10. Park Electrical Distribution Systems. Every park shall contain an electrical system consisting of wiring, fixtures, equipment and appurtenances installed and maintained pursuant to the requirements of the Public Protection and Regulation Cabinet.

Section 11. Park Fire Protection. All parks shall comply with applicable administrative regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply storage and fuel connections.

Section 12. Park Maintenance and Registration of Occupants. (1) The person to whom a permit to operate a park is issued shall at all times operate in compliance with this administrative regulation. The permittee shall maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) The permittee shall notify park occupants of all applicable provisions of this administrative regulation and of their duties and responsibilities under this administrative regulation.

(3) The permittee shall be responsible for the proper placement of each mobile home on its mobile home stand and for securing its stability and installing all utility connections.

(4) The permittee shall maintain a register containing the names of all park occupants. Such register shall be available to any authorized person inspecting the park.

Section 13. Parks Constructed prior to January 12, 1973. All mobile home parks in existence and holding a valid construction or operating permit on January 12, 1973 may be eligible for a permit to operate notwithstanding the parks do not fully meet the design and construction requirements of this administrative regulation if the park facilities are capable of being maintained in a safe and sanitary manner pursuant to the operational requirements of this administrative regulation; and that no public health nuisance exists.

Section 14. Inspection of Parks. (1) At least once every twelve (12) months, the cabinet shall inspect each park and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If an agent of the cabinet makes an inspection of a park, he shall record his findings on an official cabinet inspection report form DFS-318 - Mobile Home and Recreational Vehicle Park Inspection Report and provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth the specific violations if found;

(b) Establish a specific and reasonable period of time for the correction of the violations found; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 15. Suspension of Permits. (1) If the cabinet has reason to believe that an imminent public health hazard exists, or if the permit holder has interfered with the cabinet in the performance of its duties, the permit may be suspended immediately upon notice to the permit holder without a hearing on form DFS-212 - Request for Hearing. The permit holder may request a hearing which shall be in accordance with 902 KAR 1:400. [~~granted as soon as practicable.~~]

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct them. If a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within the ten (10) day period.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing shall not be made unless the interested party assumes the costs and a request is made at the time a hearing is requested.~~]

Section 16. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit on form DFS-215 - Application for Reinstatement of Suspended Permits. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 17. Revocation of Permits. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to the action, the cabinet shall notify the permit holder, in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice unless a request for a hearing is filed with the cabinet by the permit holder, within the ten (10) day period.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: 400 mobile home parks.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing

administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 219.310 to 219.410.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 219.380(1) states "The cabinet may administer the provisions of KRS 219.310 to 219.410 through the respective local health department concerned."

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.

2. State compliance standards. None exists.

3. Minimum or uniform standards contained in the federal mandate. None exists.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

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 Environmental Health and Community Safety
(Amendment)

902 KAR 15:020. Recreational vehicles.

RELATES TO: KRS 219.310 to 219.410, 219.991(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 219.310 to 219.410 and 219.991(2) directs the Cabinet for Health Services [~~Human Resources~~] to regulate recreational vehicle parks in Kentucky. This administrative regulation establishes standards for park construction and layout; sanitary standards for operation and other matter necessary to insure a safe and sanitary recreational vehicle park operation. Executive Order 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.

Section 1. Definitions. In addition to the definitions set forth in KRS 219.320, the following definitions shall apply:

(1) "Park street" means the paved portion of a roadway between curbs or, if not paved, the surfaced area separating sites.

(2) "Recreational vehicle parking area" means that portion of the space used to park the recreational vehicle and towing vehicle, if any.

(3) "Self-contained recreational vehicle park" means a park in which all recreational vehicle spaces are designed with water and sewer riser pipe connections that permit only the parking of self-contained recreational vehicles.

(4) "Sewer riser pipe" means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at each recreational vehicle space.

Section 2. Application for Construction Permit. Application for a permit to construct or alter a recreational vehicle park shall be made in writing to the cabinet and shall contain:

(1) The name and address of the applicant;

(2) The name and location of the park;

(3) The number and size of all recreational vehicle spaces;

(4) The number of park lights and wattage;
(5) The number of water closets, urinals, lavatories and showers;
(6) The number of sanitary and watering stations;
(7) Source of water supply;
(8) Type of sewage disposal;
(9) Method of solid waste disposal;
(10) Source of electrical services;
(11) Evidence of compliance with local zoning laws; and
(12) Be accompanied by a fee established by the cabinet.

Section 3. Submission of Construction Plan. Each application for a permit to construct or alter a recreational vehicle park shall be accompanied by a complete plan, drawn to scale, submitted in triplicate, of the proposed park or alteration. The plans shall show all existing and proposed facilities including:

(1) The size of the area and general dimensions of the tract of land being developed;

(2) The number, location and size of all recreational vehicle spaces;

(3) The area within the space planned for location of the recreational vehicle including setback distances where applicable;

(4) The location and width of roadways, driveways and walkways;

(5) The number, location and size of all off-street automobile parking spaces;

(6) The location of the exterior area lights and the exterior electrical distribution system;

(7) Detailed drawings of water supply if source is other than public;

(8) Detailed drawings of sanitary station and watering station;

(9) Detailed drawings of sewage disposal facilities, including written specifications;

(10) Detailed drawings of refuse storage facilities;

(11) The location and size of water and sewer lines and riser pipes;

(12) Size and location of any playground area within the park, if provided; and

(13) A separate floor plan of all service buildings and other improvements constructed or to be constructed within the recreational vehicle park including a plumbing riser diagram.

Section 4. Location, Space and General Layout Standards. (1) The recreational vehicle park shall be located on a well drained site, susceptible to quick drying following rains and shall be so located that its drainage will not endanger any water supply.

(2) The area of the recreational vehicle park shall be large enough to accommodate the designated number of recreational vehicle spaces, necessary streets and roadways and parking areas for motor vehicles.

(3) Each recreational vehicle space shall be numbered and displayed in some systematic order.

(4) Each recreational vehicle space shall contain a minimum of 1,500 (approximately 30' by 50' recommended) square feet.

(5) Recreational vehicles shall be separated from each other and from other structures by at least fifteen (15) feet.

(6) All recreational vehicles shall be located at least twenty-five (25) feet from any public street or highway right-of-way and at least ten (10) feet from other park property boundary lines.

(7) All parking areas shall be provided with safe and convenient vehicular access from abutting public or park streets or roads to each recreational vehicle space. Alignment and gradient shall be properly adapted to topography.

(8) Access to recreational vehicle parking areas shall be designed to minimize congestion and hazards at their entrance or exit and allow free movement of traffic on adjacent streets. All traffic into or out of the parking areas shall be through these entrances and exits.

(9) All spaces shall abut upon a park street. For a two (2) way park street, the minimum width shall be eighteen (18) feet and for a one (1) way park street, the minimum width shall be twelve (12) feet.

(10) Park streets, driveways and recreational vehicle parking areas shall be of all-weather construction, maintained in good condition, have natural drainage, be relatively free of dust and be maintained free of holes.

(11) Each parking area shall provide sufficient parking and maneuvering space so that the parking, loading or maneuvering of recreational vehicles incidental to parking shall not necessitate the use of any public street, sidewalk or right-of-way, or any private ground not part of the parking area.

Section 5. Lighting within the Park. A minimum equivalent to a 175 watt mercury vapor type light shall be provided at park entrances, intersections, service buildings, sanitary stations, and other areas within the park deemed necessary by the cabinet.

Section 6. Park Water Supply. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. If a public water supply of a municipality or a water district is not available, the supply for the park shall be developed and approved pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet; except if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the park supply shall be discontinued.

(2) The water supply shall be capable of supplying a minimum of fifty (50) gallons per day per recreational vehicle space.

(3) Except as provided in subsection (4) of this section, each recreational vehicle park shall be provided with one (1) or more easily accessible watering stations for filling recreational vehicle water storage tanks. Each watering station shall be protected against the hazard of backflow, backsiphonage, and other means of contamination. Watering stations shall be provided at the ratio of one (1) station per fifty (50) recreational vehicular spaces or fraction thereof. A watering station shall be separated from a sanitary station by a minimum of fifty (50) feet.

(4) In lieu of a watering station, individual water connections may be provided at each recreational vehicle space. Riser pipes provided for individual water-service connections shall be located and constructed to prevent damage by the parking of recreational vehicles.

(5) Water distribution lines and connections in the service buildings, sanitary stations, water stations and at recreational vehicle spaces shall comply with the state plumbing code.

Section 7. Park Sewage and Waste Disposal. (1) All sewage and waste matter shall be disposed of into a public sewer system, if available. If a public sewer system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet; except if a public sewer system subsequently becomes available, connections shall be made to it and the park sewer system shall be discontinued.

(2) Except for self-contained recreational vehicle parks, each park shall provide at least one (1) sanitary station. If more than seventy-five (75) recreational vehicle spaces without sewer riser pipes are provided, additional sanitary stations shall be required at the ratio of one (1) station for each seventy-five (75) recreational vehicle spaces without sewer riser pipes or fraction thereof. Sanitary stations shall consist of at least a trapped four (4) inch sewer riser pipe connected to the park sanitary sewer system, be surrounded at the inlet end by a concrete apron sloped to the drain, the riser provided with a suitable hinged cover and the area around the station shall be sloped to drain the surface water away. A water outlet shall be included to permit sanitary maintenance of the station and be marked: "This Water for Flushing and Cleaning Purposes Only." The water outlet hose shall be reel or tower mounted to insure sanitary storage when not in use. A vacuum breaker shall be installed at the highest point on the reel

or tower mounting.

(3) If facilities for individual sewer riser pipes are provided, the following requirements shall apply:

(a) The sewer riser pipe shall have at least a four (4) inch diameter and shall be located on the recreational vehicle space so that the sewer riser pipe to the recreational vehicle drain outlet will approximate a vertical position.

(b) Provision shall be made for capping the sewer riser pipe when a recreational vehicle does not occupy the space. Surface drainage shall be diverted away from the riser.

(4) All plumbing in recreational vehicle parks shall comply with the state plumbing code.

Section 8. Storage, Collection and Disposal of Park Refuse. (1) The storage, collection and disposal of refuse in the park area shall be conducted to not create a health, safety or fire hazard, rodent harborage, insect breeding area or cause air pollution.

(2) All refuse shall be stored in flytight, watertight, rodent proof containers. Containers shall be provided at the ratio of one (1) container per two (2) recreational vehicle spaces and in additional numbers as may be necessary to properly store refuse.

(3) Refuse collection stands shall be provided for all refuse containers with less than thirty-five (35) gallons capacity. Stands shall be designed to prevent containers from being tipped, to minimize spillage and container deterioration and to facilitate cleaning around them.

(4) All refuse containing garbage shall be collected at least once a week or more often if necessary. If suitable collection service is not available from municipal or private agencies, the owner or operator of the park shall provide this service. All refuse shall be collected and transported in covered, leak-proof containers or vehicles.

(5) All refuse and waste collected at a park shall be disposed in a safe and sanitary manner approved by the Natural Resources and Environmental Protection Cabinet.

Section 9. Park Service Buildings. (1) Except for self-contained recreational vehicle parks, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified by the State Plumbing Code. Service buildings shall be conveniently located within a radius of approximately 500 feet of the spaces to be served; except that variances may be granted by the cabinet due to the topography of the land and other geographical conditions.

(2) All portions of the service building shall be constructed and maintained pursuant to the requirements of the State Building Code.

(3) All rooms containing sanitary or laundry facilities shall have:

(a) All openings to the outer air in the service building effectively screened and the doors provided with springs or devices to make them self-closing;

(b) Illumination levels in the service building maintained as follows:

1. General seeing tasks - ten (10) foot-candles;
2. Laundry room work area - forty (40) foot-candles;
3. Toilet room, in front of mirrors - forty (40) foot-candles.

(c) Hot and cold water furnished to every lavatory, sink, shower and laundry fixture, and cold water furnished to every water closet and urinal;

(d) All walls, floors, ceilings, and attached or freestanding fixtures, and equipment maintained in good repair and sanitary.

(e) All refuse stored in easily cleanable containers; and

(f) Sanitary towels or a mechanical hand drying device located adjacent to the lavatories.

Section 10. Insect, Rodent, Pest and Pet Control within the Park. (1) Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Approved extermination methods and other measures to control insects and rodents shall be used.

(2) Parks shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(3) Storage areas shall be maintained to prevent rodent harborage. Lumber, pipe and other building materials shall be stored at least one (1) foot above the ground.

(4) If the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.

(5) The growth of brush, weeds and grass shall be controlled to prevent harborage of ticks, chiggers and noxious insects within the area used for the parking of recreational vehicles. Parks shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

(6) No owner or person in charge of a dog, cat or other pet animal shall permit it to run at large or to commit any nuisance within the limits of the park.

Section 11. Park Electrical Distribution Systems. Every park shall contain an electrical system consisting of wiring, fixtures, equipment and appurtenances installed and maintained pursuant to the requirements of the Public Protection and Regulation Cabinet.

Section 12. Park Fire Protection. All parks shall comply with applicable rules and administrative regulations of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply storage and fuel connections.

Section 13. Park Maintenance and Registration of Occupants and Vehicles. (1) The person to whom a permit to operate a park is issued shall at all times operate in compliance with this administrative regulation. The permittee shall maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) Every permittee shall maintain a register showing the following:

(a) The names and permanent addresses of all recreational vehicle occupants;

(b) The make, model and license number of the recreational vehicle or the tow vehicle; and

(c) The dates of arrival and departure of the recreational vehicle or its occupants.

(3) The register shall be available to any authorized person inspecting the recreational vehicle parking area.

(4) No owner or operator of a self-contained recreational vehicle park shall permit the parking of any dependent recreational vehicle within the self-contained recreational vehicle park.

(5) No owner or operator of any recreational vehicle park shall construct, install or attach or permit the construction installation or attachment of lean-tos, decks, additions, or other permanent or semipermanent structures upon a recreational vehicle or recreational vehicle space, except that collapsible awnings or screened enclosures mounted upon or transported with the recreational vehicle may be permitted.

Section 14. Parks Constructed prior to June 16, 1973. All recreational vehicle parks in existence on June 16, 1973 (the effective date of former Regulation MRP-2) may be eligible for a permit to operate notwithstanding the parks do not fully meet the design and construction requirements of this administrative regulation if it can be determined by the cabinet that the parks can be operated in a safe and sanitary manner pursuant to the operational requirements of this administrative regulation; and, if the parks have a service building, sanitary station, safe water supply, adequate sewage and solid waste disposal, and do not create a nuisance.

Section 15. Inspection of Parks. (1) At least once every twelve (12) months, the cabinet shall inspect each park and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If an agent of the cabinet makes an inspection of a park, he shall record his findings on an official cabinet inspection report form and provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth the specific violations if found;

(b) Establish a specific and reasonable period of time for the correction of the violations found; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 16. Suspension of Permits. (1) If the cabinet has reason to believe that an imminent public health hazard exists, or if the permit holder has interfered with the cabinet in the performance of its duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. The permit holder may request a hearing which shall be in accordance with 902 KAR 1:400. [~~granted as soon as practicable.~~]

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct them. If a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within the ten (10) day period.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing shall not be made unless the interested party assumes the costs and a request is made at the time a hearing is requested.~~]

Section 17. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the permit shall be reinstated.

Section 18. Revocation of Permits. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400. [~~by the cabinet.~~] Prior to such action, the cabinet shall notify the permit holder, in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice unless a request for a hearing is filed with the cabinet by the permit holder, within the ten (10) day period.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 14, 1996 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: 2,961 recreational vehicle parks.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 219.310 to 219.410.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 219.380(1) states "The cabinet may administer the provisions of KRS 219.310 to 219.410 through the respective local health department concerned."

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.

2. State compliance standards. None exists.

3. Minimum or uniform standards contained in the federal mandate. None exists.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

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 Environmental Health and Community Safety
(Amendment)

902 KAR 20:350. Boarding homes.

RELATES TO: KRS 216B.300-216B.320, 216B.990

STATUTORY AUTHORITY: KRS Chapter 13B, 216B.305, EO 95-79

NECESSITY AND FUNCTION: KRS 216B.305 mandates that the Cabinet for Health Services [~~Human Resources~~] adopt standards through administrative regulation relating to boarding homes. This administrative regulation provides the standards for the operation of boarding homes. Executive Order 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.

Section 1. Definitions. (1) "Home" means a boarding home.

(2) "Registrant" means the owner of the home.

(3) "Manager" means person responsible for the day-to-day operation of the home.

(4) "Resident" means any person, including a boarder as defined in KRS 216B.300(3), other than the registrant, manager or person related to the registrant or manager, who is living in the home. The resident may require some minimal degree of assistance or supervision, but not to the level of care provided by family care homes or personal care homes.

(5) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting:

1. The rapid and progressive growth of infections or toxigenic microorganisms; or

2. The slower growth of Clostridium botulinum.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (ph) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(6) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) Family child care home;

(c) Adult day care center;

(d) Adult day health care facility;

(e) Family care home;

(f) Group home for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospital;

(h) Intermediate care facility;

(i) Nursing facility;

(j) Nursing home;

(k) Personal care home;

(l) Skilled nursing facility;

(m) Psychiatric residential treatment facility;

(n) Child caring facility;

(o) Child placing agency;

(p) Rural primary care hospital;

(q) Alzheimer nursing home;

(r) Youth camp;

(s) Boarding home; or

(t) Alternate intermediate service for the mentally retarded or developmentally delayed.

Section 2. Scope of Operations and Services. Boarding homes are operated and maintained to provide residential and dining services for at least three (3) individuals in accordance with KRS 216B.300(4).

Section 3. Registration Procedure. (1) An applicant seeking initial registration or a registrant seeking renewal shall:

(a) Submit an application on forms that the cabinet requires to the Department for Health Services, Health Services Building, 275 East Main St., Frankfort, KY, 40621; and

(b) Pay a registration fee of $100.

(2) Upon receipt of an application, the cabinet or its agents shall make an inspection of the home to determine compliance with the provisions of KRS Chapter 216B and this administrative regulation. When inspection reveals that the applicable requirements of KRS Chapter 216B and this administrative regulation have been met, registration shall be issued to the applicant by the cabinet.

(3) A receipt of registration shall be sent to the registrant.

(4) Unless renewed, initial registration shall expire on March 31 following the date of registration, as shown on the receipt of registration sent to the registrant, and every March 31 thereafter.

Section 4. Operation and Management of Boarding Homes Whose Residents Do Not Meet the KRS 216B.300(3) Definition of "Boarder". (1) The registrant shall be legally responsible for the operation of the home and for compliance with all federal, state and local laws and administrative regulations pertaining to the operation of the home.

(2) The manager shall be a literate adult, at least eighteen (18) years of age, who has general knowledge of the residents' physical and mental condition.

(3) The manager shall be the person directly responsible for the twenty-four (24) hour daily operation of the home or for delegating that responsibility to another individual meeting criteria in subsection (2) of this section. The name of that individual to whom the responsibility may be designated shall be in writing and provided to the agents of the cabinet inspecting the home.

(4) The manager shall maintain records, located on the premises and available for inspection by the cabinet or its agents, which contain the following information (typed or in ink) about each resident who does not meet the KRS 216B.300(3) definition of a "boarder":

(a) Name and sex.

(b) Date of birth.

(c) Previous place of residence.

(d) Attending physician, mental health professional, and dentist, if any, address and phone number for each.

(e) Next of kin or responsible person (or agency), address and telephone number.

(f) Amount charged per week or month by the home.

(5) The manager shall have phone numbers of a hospital, an ambulance service, fire department, and a physician for emergencies posted by the telephone in large legible print.

(6) The manager shall have a written procedure for obtaining emergency services.

(7) All prescription medications taken by residents who do not meet the KRS 216B.300(3) definition of a "boarder" shall be noted in writing by the manager to include the date, time and dosage of the medication. The manager shall keep the original in a file and make it available to the cabinet or its agents upon request.

(8) The manager shall make a written report of any accident involving a resident, any incident involving a resident's health, welfare or safety, and any death of a resident. The manager shall keep the original in a file and make it available to the cabinet or its agents upon request.

(9) The manager shall provide for resident rights pursuant to KRS 216B.303.

(10) The registrant shall request and review all criminal conviction information for any applicant for employment or volunteer services from the Justice Cabinet prior to employing the applicant or utilizing the volunteer.

(11) Initial registrations may be denied and existing registrations may be revoked if the applicant for registration or the registrant has:

(a) Been convicted of a crime relating to abuse, neglect or exploitation of a child or an adult;

(b) Abused, neglected or exploited a child or an adult;

(c) Been listed on the Nurse's Aide Abuse Registry by the Office of the Inspector General; or

(d) Had a human services center or facility registration, certification, permit or license denied or revoked or voluntarily forfeits their certification, registration, license or permit after the cabinet initiates denial or revocation action.

(12) The manager shall report all suspected cases of abuse, neglect, or exploitation of adults or children to the cabinet pursuant to KRS Chapters 209 and 620.

(13) If a person who has job duties is known or is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job, the individual shall not perform these duties until such time as the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the home and the individual involved shall be resolved by the individual's physician.

(14) The registration from the cabinet shall be posted in a conspicuous place in the home.

Section 5. Services to be Provided by Homes Whose Residents Do Not Meet the KRS 216B.300(3) Definition of "Boarder". (1) Basic services.

(a) All homes shall ensure that residents obtain basic room and board services.

(b) The home shall provide each resident with a lockable bureau or cupboard for storage of personal belongings.

(c) Mattress pads or covers shall be used on all mattresses. Beds, mattresses, springs, slats, mattress pads and cover shall be sanitary and in good repair. Each bed shall be provided with two (2) sheets; and one (1) pillow and one (1) pillowcase for each resident. Sheets and pillowcases shall be kept clean and changed at least once per week, or more often if necessary, or when there is a new resident. All beds shall be supplied with sufficient blankets or coverings to keep the resident warm.

(d) It shall be the responsibility of the manager, if a resident is unable due to an accident or acute illness, to obtain the services of a physician.

(e) Residents shall not require a degree of care exceeding the skill of the operator to provide.

(f) Prescription drugs for residents who do not meet the KRS 216B.300(3) definition of "boarder" shall be kept in a locked cabinet.

(2) Communicable diseases.

(a) The manager shall not allow individuals infected with the following diseases to reside in the home unless the individual's attending physician certifies in writing that the condition of the individual is not communicable to others in the home environment: anthrax, cammpylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tuberculosis, tularemia, and typhus. If an attending physician is in doubt regarding the communicability of a individual's condition, the physician may contact the Department for Health Services.

(b) A home may admit a (noninfectious) tuberculosis patient under continuing medical supervision for the patient's tuberculosis disease.

(c) If a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the manager shall assure that a physician is contacted and that appropri-

ate measures are taken on behalf of that resident and the other residents in the home.

(3) Dietary services for residents who do not meet the KRS 216B.300(3) definition of a "boarder".

(a) Food supplies.

1. Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. The use of food that was not prepared in an approved food processing establishment is prohibited.

2. Fluid milk and fluid milk products used shall be pasteurized and shall comply with applicable law. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a home.

3. Only clean shell eggs meeting applicable grade standards, or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.

4. Only ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

(b) Food protection.

1. Prepared, or served, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, unclean equipment or utensils, unnecessary hand contact, draining, or overhead leakage or condensation, dust, coughs and sneezes or other agents of public health significance.

2. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above at all times, except during necessary times of preparation or service.

3. Hermetically sealed (airtight) packages shall be handled so as to maintain product and container integrity.

4. Pets may be present on the premises, but shall not be permitted in the kitchen.

5. Laundry facilities.

a. In facilities that are initially licensed within one (1) year of the effective date of this administrative regulation, laundry facilities may be located in the kitchen, but shall not be used during food preparation and service.

b. In facilities that are initially licensed more than one (1) year after the effective date of this administrative regulation, laundry facilities shall not be located in the kitchen.

(c) Food preparation.

1. Food shall be prepared with the least manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

2. Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served.

3. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:

a. Poultry and poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process;

b. Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit;

c. Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit;

4. Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes;

5. Unpasteurized liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

6. Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served. Bainsmarie, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

7. Potentially hazardous foods shall be thawed:

a. In refrigerated units at a temperature not to exceed forty-five (45) degrees Fahrenheit; or

b. Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period that shall not exceed that reasonably required to thaw the food; or

c. In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process, or when the entire, uninterrupted cooking process takes place in the microwave oven; or

d. As part of the conventional cooking process if the food is less than, or equal to, three (3) pounds.

(d) Food display and service.

1. Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of packaging, or by the use of easily cleanable display cases, serving line or salad bar protector devices, covered containers for self-service, or by other effective means. Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for resident self-service in the home.

2. Condiments, seasonings and dressings for self-service use shall be provided in individual packages, or in dispensers or containers except that, for table service, catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for resident use shall be provided in individual packages or in pour-type dispensers.

3. Ice for resident use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination.

4. Once served to a resident, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served. However, single-service creamers and completely wrapped pats of butter or margarine may be re-served if still packaged and in sound condition.

(e) Employee health and practices.

1. Employees engaged in food preparation, service and ware-washing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

2. Employees shall wear clean outer clothing.

3. Hairnets, hats, scarfs or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas.

4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

5. Employees shall consume food or use tobacco only in designated areas. Such designated areas shall not be located in food preparation areas or in areas where the eating or tobacco use of an employee may result in contamination of food, equipment, or utensils.

6. All employees shall wash their hands thoroughly with soap and warm water in an adequate hand-washing facility before starting work and as often as necessary to remove soil and contamination. The hands of all employees shall be kept clean, while engaged in handling of food and food contact surfaces.

(f) Equipment and utensils.

1. Equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion

resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food.

2. Safe plastic or safe rubber or safe rubber-like materials shall be resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, and shall be of sufficient weight and thickness to permit cleaning and sanitizing by normal ware-washing methods.

3. Single-service articles shall not be reused.

4. All equipment and utensils shall be maintained in good repair.

(g) Equipment and utensils/cleaning and sanitization.

1. Food utensils and equipment shall be stored in a manner to avoid contamination.

2. Food contact surfaces and sinks shall be smooth and easily cleanable.

3. Food contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

4. Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

5. Equipment and utensils shall be preflushed or prescrapped and, when necessary, presoaked to remove food particles and soil.

6. Manual cleaning and sanitizing shall be conducted as follows:

a. For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The cabinet may allow the use of compartments other than sinks.

b. All five (5) steps of the ware-washing process shall be completed as follows:

(i) Prerinsing or scraping;

(ii) Application of cleaners for soil removal;

(iii) Rinsing to remove any abrasives and remove or dilute cleaning chemicals;

(iv) Sanitization; and

(v) Air drying and draining.

c. A sanitizing method approved by applicable provisions of the state retail food code shall be used.

d. Wash, rinse and sanitizing solution shall be maintained in a clean condition.

e. The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

f. When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by law, and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used at least once each business day and each time the sanitizing solution is changed.

7. Mechanical cleaning and sanitizing shall be conducted as follows:

a. Commercial dishwashers must comply with applicable provisions of the state retail food code.

b. A domestic or home-style dishwasher may be used provided the following performance criteria are met:

(i) The dishwasher shall effectively remove physical soil from all surfaces of dishes.

(ii) The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

(iii) The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150 degrees Fahrenheit after the final rinse and drying cycle.

(iv) The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing kitchen facilities' utensils and tableware; a copy of the instructions shall be available on the premises at all times.

8. There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, hand washing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air dried.

(h) Water supply and sewage disposal.

1. Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection.

2. Bottled and packaged potable water shall be obtained from a source that complies with applicable provisions of the Cabinet for Natural Resources and Environmental Protection, and the cabinet, and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the original container.

3. All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection, and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

(i) Toilet facilities for employees.

1. Toilet facilities shall be installed pursuant to requirements of the state plumbing code, shall be conveniently located, and shall be accessible to employees at all times.

2. Bathrooms opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by window(s) or by mechanical means. A soap dispenser and disposal towels shall be provided for hand washing in bathrooms used by food handlers.

3. Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

(j) Hand-washing facilities for employees.

1. Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code and shall be conveniently located in the food preparation area.

2. Each hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

3. A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facilities.

4. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed.

5. Hand washing shall take place at a hand-washing lavatory or designated service sink and not at food preparation sink or at a ware-washing sink.

(k) Insect and rodent control.

1. Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

2. Pesticides and rodenticides.

a. No person shall apply insecticides or rodenticides except as follows:

(i) In accordance with applicable requirements of the Kentucky

Department of Agriculture's Pesticide Use and Application Act;

(ii) In accordance with the manufacturer's labeling; and

(iii) In such a way that food, food contact surfaces, and the supply of potable water are not contaminated.

b. No open pesticide or rodenticide bait boxes shall be used.

c. Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils, and all containers of toxic material shall be clearly labeled for easy identification.

d. Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(l) Therapeutic diets. Special diets or dietary restrictions shall be medically prescribed and provided accordingly.

(m) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.

(n) All food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(4) Housekeeping and sanitation. Each home shall:

(a) Have openings to the outside which shall be effectively protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch;

(b) Eliminate odors at their source by prompt and thorough cleaning of commodes and other obvious sources;

(c) Maintain the premises in such a manner as to prevent infestation by insects and rodents;

(d) Soiled clothing and linens shall be given immediate attention and shall be kept in a closed container. Once used, clothing or bedding shall be laundered before being used by another individual;

(e) All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the cabinet; provided, however, if a public sewerage system subsequently becomes available, connections shall be made thereto and any other sewerage system shall be discontinued.

(f) Collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and regulations. Garbage containers shall be made of metal or other impervious material, and shall be watertight and rodent proof, and shall have tight-fitting covers.

Section 6. Accommodations. Each home shall:

(1) Be safe and of substantial construction and comply with applicable state and local laws relating to location, zoning, plumbing, and sanitation;

(2) Provide lighting with a minimum illumination level of fifty (50) foot-candles for each hall, stairway, entryway, resident area, and bathroom; a minimum illumination level of thirty (30) foot-candles shall be required for kitchens;

(3) Have a water supply which is potable, adequate and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply shall be developed and approved in accordance with applicable requirements of the Natural Resources and Environmental Protection Cabinet; provided, however, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and any other supply shall be discontinued;

(4) Have an ample supply of hot and cold running water available at all times for general use. The water temperature at any tap shall not exceed 110 degrees Fahrenheit and all plumbing shall be installed pursuant to the State Plumbing Code;

(5) Have adequate toilet and bathing facilities conveniently located as required by the State Plumbing Code. Toilet facilities shall be kept clean and in good repair;

(6) Have adequate ventilation in all areas used by residents. Toilet rooms shall be vented to the outside, if there is no window. There shall be an exterior window which can be opened in each resident room;

(7) Assure that beds occupied by residents shall be placed so no resident may experience discomfort due to proximity to radiators, heat outlets, or exposure to drafts;

(8) Not use stacked beds;

(9) Have beds and mattresses that are no less than thirty-three (33) inches wide and six (6) feet long;

(10) Not house residents in rooms or detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not approved by the cabinet for sleeping quarters. Approved basements must have an outside door;

(11) Not be located in a house trailer or motor home;

(12) Provide a heating system which can maintain an even temperature and is capable of maintaining a minimum temperature of seventy-two (72) degrees Fahrenheit in resident-occupied areas under winter conditions and a maximum temperature of eighty-five (85) degrees under summer conditions; and

(13) Be able to accept a resident who uses a wheelchair by assuring that the resident is able to enter and exit the home and utilize the bathroom facility without assistance (i.e., ramps, railings, etc.).

(14) Toilet rooms normally accessible and intended for public use shall comply with the provisions of Section 5(3)(i) of this administrative regulation.

Section 7. Safety. Each home shall take appropriate precautions to ensure the safety of the residents and visitors by:

(1) Having all exterior grounds including sidewalks, steps, porches, ramps, and fences in good repair;

(2) Having all of the home's interior including walls, ceilings, floors, floor coverings, steps, windows, window coverings, doors, plumbing, and electrical fixtures in good repair;

(3) Having a fire control and evacuation plan;

(4) Having an adequate number of 2A10 B:C rated fire extinguishers located throughout the home with a minimum of one (1) per floor or level of the residence;

(5) Having a 40 B:C rated fire extinguisher located within each food preparation area in the home;

(6) Having a person in charge thoroughly oriented in the evacuation of the residents in the event of a fire, with evacuation plans posted in individual rooms and common use areas; and

(7) Having smoke detectors located as follows:

(a) One (1) shall be located in each bedroom; and

(b) At least one (1) shall be located on each floor or level of the home;

(8) Having at least one (1) emergency lighting source available in the home that automatically illuminates with a loss of power to the home.

Section 8. Complaint Procedures. (1) Complaints by registrants shall be directed to the appropriate agency.

(2) Every home shall conspicuously post a listing of agencies and their telephone numbers, including:

(a) The Protection and Advocacy Division of the Public Protection and Regulation Cabinet;

(b) The Adult Protective Services Division of the Department for Social Services;

(c) The health department of the county in which the home is situated; and

(d) The comprehensive care center for that area development district, and any other comprehensive care center that may serve residents in the home.

(e) The Division of Licensing and Regulation.

Section 9. Suspension of Registration. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the registrant or manager has interfered with the authorized agents of the cabinet in the performance of their duties, the registration may be suspended immediately upon notice to the registrant without a hearing. In such event the registrant may request a hearing [~~which shall be granted as soon as practicable~~].

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet or its agents may serve upon the registrant a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. Whenever there is a failure to comply with any written notice issued under the provisions of this administrative regulation, the registrant shall be notified in writing that the registration shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet, by the registrant within the ten (10) day period.~~]

Section 10. Reinstatement of Suspended Registration. Any registrant may, at any time, make application for a reinspection for the purpose of reinstatement of the registration. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this administrative regulation, the registration shall be reinstated.

Section 11. Revocation of Registration. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the registration may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the registrant in writing, stating the reasons for which the registration is subject to revocation and advising that the registration shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet by the registrant, within the ten (10) day period.~~]

Section 12. Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this administrative regulation shall be conducted by the cabinet at a time and place designated by it. During the course of the hearing, an appellant shall be given the opportunity to hear evidence against him, to cross-examine any witness against him and to present evidence in his behalf. At the conclusion of the hearing, the cabinet shall make findings of fact and conclusions of law. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefore at the time a hearing is requested.~~]

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: There are an estimated 3,000 boarding homes in Kentucky.

(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: None 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: None 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 increase.

2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.

2. Continuing cost or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from registrations to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied. The boarding home registration fee is set by statute.

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 program will eventually be decentralized to the local health department environmentalists to carry out the provisions of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. It is the intent for local health departments, environmental health programs to carry out the boarding home program.

4. How does this administrative regulation affect the local government or any service it provides? Local health department environmentalists will conduct surveillance and enforcement activities of all environmental health programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Health Systems Development
(Amendment)

902 KAR 22:030. Midlevel health care practitioner.

RELATES TO: KRS 216.900 through 216.930

STATUTORY AUTHORITY: KRS Chapter 13B 216.920, 216.925

NECESSITY AND FUNCTION: KRS Chapter 216 mandates that the Kentucky Board of Family Health Care Providers promulgate administrative regulations necessary to implement their duties and responsibilities. The administrative regulation responds to provisions of KRS 216.920 which requires the Kentucky Board of Family Health Care Providers to certify and recertify midlevel health care practitioners; develop and administer qualifying examinations for midlevel health care practitioners; identify continuing education requirements for midlevel health care practitioners.

Section 1. Definition. "Midlevel health care practitioner (MAP)" means a person certified by the Kentucky Board of Family Health Care Providers to provide limited management of chronic conditions to patients in a licensed network following treatment protocols reviewed and approved by the board pursuant to KRS 216.925.

Section 2. Application for Certification. (1) The application form as shown in these administrative regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.

(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the scheduled examination with the fee of fifty (50) dollars.

(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:

(a) Applicant has been convicted of a misdemeanor involving moral turpitude or a felony;

(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;

(c) Applicant has an addiction to alcohol or any other chemical substances;

(d) Applicant has misrepresented any facts on the application;

(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;

(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216.

(5) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 3. Approved Qualifying Examinations. (1) The examination for certification as a midlevel health care practitioner shall consist of a written portion and a clinical/skills practicum portion.

(2) The qualifying examination for certification as a midlevel health care practitioner shall consist of the following components as approved by the Kentucky Board of Family Health Care Providers:

(a) The written portion of the examination shall consist of items based on medical treatment protocols developed and approved by the Kentucky Board of Family Health Care Providers.

(b) The clinical practicum portion of the examination shall test the applicant's skills and shall be based on the medical treatment protocols developed and/or approved by the Kentucky Board of Family Health Care Providers.

(c) A score of seventy (70) percent shall be achieved on the written portion of the qualifying examination and a score of 100 percent shall be achieved on the clinical/skills portion of the examination for certification as a midlevel health care practitioner.

(3) The board shall recognize the national or state qualifying examinations for certification or licensure of advanced registered nurse practitioners, physician assistants and registered nurses as the qualifying examination for the certified midlevel health care practitioner.

Section 4. Qualifying Examination Administration. (1) Examination sites and examination frequency shall be designated by the Kentucky Board of Family Health Care Providers and published annually.

(2) There shall be no limit on the number of times a candidate can take the examination for certification.

(3) The candidate shall notify the Kentucky Board of Family Health Care Providers if a new test date is desired.

Section 5. Initial Certification of Midlevel Health Care Practitioners. (1) To be certified by the Kentucky Board of Family Health Care Providers as a midlevel health care practitioner, a person shall:

(a) Be a health care professional who, by license or certification directly deals with physical or psychological illness of a patient;

(b) Submit a completed application with the required fee;

(c) Be of good character and reputation;

(d) Meet the requirement for application pursuant to KRS 216.925;

(e) Have passed an examination approved by the Kentucky Board of Family Health Care Providers.

(2) The certified midlevel health care practitioner shall practice only in licensed networks following the guidelines pursuant to KRS 216.925.

(3) Certification shall begin on or before July 1, 1992, and completion of the qualifying examination is required every five (5) years thereafter.

(4) Interagency cooperation.

(a) The board shall notify in writing other health care profession licensing or certifying agencies of an individual's additional certification as a midlevel health care practitioner.

(b) The board shall request that if the other health care profession licensing or certifying agency revokes the midlevel health care practitioner's license or certification, that notice of the revocation be sent to the Cabinet for Human Resources within ten (10) days of the agency's action.

Section 6. Recertification of Midlevel Health Care Practitioners. (1) The application form as shown in these administrative regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.

(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the end of the licensure period with the fee of fifty (50) dollars.

(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:

(a) Applicant has been convicted of a misdemeanor involving moral turpitude or a felony;

(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;

(c) Applicant has an addiction to alcohol or any other chemical substances;

(d) Applicant has misrepresented any facts on the application;

(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;

(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216;

(g) Applicant has failed to complete mandatory education requirements.

(5) The midlevel health care practitioner shall provide evidence of having completed the required ten (10) medical education hours annually for recertification.

(6) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 7. Revocation of Certification. (1) A midlevel health care practitioner's certification may be revoked for the following reasons:

(a) Conviction of a misdemeanor involving moral turpitude or felony;

(b) Any other health care profession license or certificate is denied or revoked in any state or territory;

(c) Addiction to alcohol or any other chemical substances;

(d) Misrepresentation of any facts during the application, testing and certification process or at any time while practicing as a midlevel health care practitioner in a licensed network;

(e) Failure to complete the ten (10) required medical education hours recognized by the board.

(2) The board shall request in writing to the supervising physician of the licensed network where the midlevel health care practitioner is employed that notification be provided to the designated Cabinet for Human Resources staff of the occurrence of any of the above.

(3) Administrative hearings due to appeal or denial shall be held in accordance with 902 KAR 1:400.

Section 8. Mandatory Continuing Education Requirements. (1) Any human immunodeficiency virus education courses shall be in accordance with 902 KAR 2:160, Human immunodeficiency virus education continuing education for professionals.

(2) Courses shall utilize organized learning experiences through personal professional presentations or educational programs meeting the criteria for AMA Category 1 or the Kentucky Board of Nursing requirements.

(3) Continuing education courses approved by any other health care profession licensing or certifying agency shall be considered for relevance to the role of midlevel health care practitioners and for approval as continuing education courses for midlevel health care practitioners by the Kentucky Board of Family Health Care Providers.

(a) The potential provider of continuing education requirements for the midlevel health care practitioner shall request an application for approval as a provider and the board shall assign the potential provider of continuing education a permanent, nontransferable number. The provider of continuing education number shall be used to identify all communications, offering announcements, records, and reports.

(b) Applications for approval as a provider of continuing education may be submitted at any time during the year.

(c) If the potential provider of continuing education meets the board's standards and criteria, approval shall be granted.

(4) At the time of recertification the certified midlevel health care practitioner shall submit to the Kentucky Board of Family Health Care Providers in the form of certificates, examinations, signed forms, etc., proof of completion of ten (10) approved medical education hours per year to the following address: Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(See Forms on following two pages)

I hereby submit a photograph of myself taken within the past six (6) months. Further, I swear that the statements herein contained are strictly true in every respect; that I have never been convicted of a felony or a misdemeanor involving moral turpitude; that I am not addicted to alcohol or other chemicals; that I have read and understand this affidavit; and that if this petition is granted and certification is subsequently issued to me, I will comply with the laws governing the practice of midlevel health care practitioner in the Commonwealth of Kentucky and do my utmost to uphold and maintain professionalism in the health care field.

_____
(Signature of Applicant)

Signed and sworn to before me this _____ day of _____, 19__.

_____
(Official designating officer administering oath)

On this _____ day of _____, 19__, personally appeared before me, referred to in the foregoing application for admission to an examination to demonstrate his qualifications to practice as a midlevel health care provider in the Commonwealth of Kentucky. I hereby certify that the accompanying photograph is that of the person making this application for examination for certification to practice as a midlevel health care provider.

Signature _____

Official Title _____

AFFIDAVIT

State of _____

County of _____

(Attach photograph in space provided on form.)

Examination Date _____ Application No. _____

APPLICATIONS MUST BE TYPED OR FILLED OUT IN INK

APPLICATION FOR CERTIFICATION

KENTUCKY BOARD OF FAMILY HEALTH CARE PROVIDERS FOR CERTIFICATION TO PRACTICE

Commonwealth of Kentucky

Frankfort, Kentucky 40621

AN EQUAL OPPORTUNITY EMPLOYER M/F/H

CHECK APPROPRIATE BOX

- ☐ Applicant for Examination
- ☐ Certified or licensed P.A., A.P.R.N. applicant for certification
- ☐ Recertification

To the Kentucky Board of Family Health Care Providers:

I hereby apply for permission to take an examination at the next scheduled examination to demonstrate my qualifications to practice as a midlevel health care practitioner in the Commonwealth of Kentucky. I enclose herewith the required fee of fifty ($50) dollars (certified check or money order) and furnish below the information to which my affidavit is added at the end.

Social Security No. _____ Home Phone No. _____ Work Phone No. _____

☐ Mr.
☐ Ms.

Address: _____ (Last Name) _____ (First Name) _____ (Middle Name) _____ (Maiden Name (if any))

_____ (Street, R.F.D., or Box No.) _____ (City) _____ (State) _____ (Zip Code)

Date of Birth: _____ (Month) (Day) (Year)

PREVIOUS EDUCATION

EDUCATION AND TRAINING: Please circle highest grade completed. College transcripts are required.
Grade School 1 2 3 4 5 6 7 8 High School 9 10 11 12 College 1 2 3 4 Graduate School 1 2 3 4
Have you passed a G.E.D. Test? Yes ☐ No ☐ If yes attach a copy of the scores or the G.E.D. certificate

School	Name and Address of School	Dates Attended From	Dates Attended To	Date of Graduation	Number of Hours Completed	Number of Hours Now Carrying	Fields of Study Major	Fields of Study Minor	Degree, Diploma, or Certificate Earned
High School				mo/yr					Diploma: Yes _____ No _____
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Vocational, Business, Technical		mo/yr	mo/yr	Clock hours weekly:	Clock hours Completed:			Must provide copy of certificate	Certificate Earned:
Apprenticeship	Type:	mo/yr	mo/yr	Length:	Journeyman: yes _____ no _____				Must provide copy of certificate

* Please indicate if quarter hours

PREVIOUS EXPERIENCE

LICENSES OR CERTIFICATES; Date, number and sources of any previous licenses to practice in any health field in any state or territory.

Name of Trade or Profession	Original Lic. Issue Date	Current Lic. Expiration Date	Name and Address of Licensing Agency
License:			
License:			
License:			

EMPLOYMENT HISTORY: Begin with your present or most recent job and list fully and accurately the details of each job you have held. Include Volunteer work. If you moved to a different position within the same organization so that your duties changed, then describe that as a separate job. Resumes must follow the format shown below. PLEASE NOTE IF YOU WORKED UNDER A DIFFERENT NAME. *(Attach additional sheets if necessary).*

Employed: From: Mo. Day Yr. To: Mo. Day Yr. Title of Position Reason for leaving Name of Employer Address: Street City State Zip Name and title of your immediate supervisor	A description of jobs MUST be given:
Employed: From: Mo. Day Yr. To: Mo. Day Yr. Title of Position Reason for leaving Name of Employer Address: Street City State Zip Name and title of your immediate supervisor	A description of jobs MUST be given:
Employed: From: Mo. Day Yr. To: Mo. Day Yr. Title of Position Reason for leaving Name of Employer Address: Street City State Zip Name and title of your immediate supervisor	A description of jobs MUST be given:

If you have ever been examined and refused a license as a health care professional or if you have ever had a health care professional license canceled or revoked, give full particulars.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary

APPROVED BY AGENCY: May 10, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 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: Danise Newton

(1) Type and number of entities affected: Applicants for tests for midlevel health care practitioner.

(2) Direct and indirect cost to those affected:

(a) Cost of living and employment in a geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: It will not effect on the cost of living or employment in the state.

(b) Cost doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: It will have no effect on the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (Note any effects upon competition) for the: There are no additional compliance, reporting, or paperwork requirements required in this regulation.

(3) Effects on the promulgating administrative body: Minimal amount of staff assistance to the board in the processing of applications for certification of midlevel health care practitioners. Meetings of the board are held quarterly. All costs other than staff time will be charged to the Trust Fund made up from fees received for testing.

(a) Direct and indirect cost:

1. First year: Minimal
2. Continuing costs: Minimal
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Tracking testing and certification.

(4) Assessment of anticipated effect on state and local revenues: All costs other than staff time will be charged to the trust fund made up from testing fees.

(5) Source of revenue to be used for implementation and enforcement of administrative regulations: Testing fees.

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

(a) Geographical area in which administrative regulation will be implemented: This regulation will not create any additional economic impact on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the provisions are mandated by state law.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this regulation will have a beneficial effect on the public's health in terms of additional practitioners available to underserved areas of the state.

(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: Additional health care practitioners would not be available.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because it does not create disproportional impact on part, class, or division of regulated entity.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 45:005. Retail food code.

RELATES TO: KRS 217.005 to 217.215, 217.992, 21 CFR Chapter 1, Subparts B, D, Subchapter B, Part 170

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 219.031, 21 CFR Chapter 1, Subparts B, D, Subchapter B, Part 170, EO 95-79

NECESSITY AND FUNCTION: KRS 217.005 to 217.215 and 217.992(4) authorizes the Cabinet for Health Services [~~Human Resources~~] to regulate food service establishments and retail food stores. The function of this administrative regulation is to establish a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health. Executive Order 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.

Section 1. Definitions. (1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025.

(2) "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.

(3) "Chemical preservative" means any chemical that, if added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(4) "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

(5) "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(6) "Easily cleanable" means that surfaces are readily accessible and made of a material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(7) "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in

a food handling establishment.

(8) "Equipment" means stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

(9) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(10) "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(11) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Liquid waste" means the discarded fluid discharge from any fixture, appliance, area or appurtenance.

(13) "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035.

(14) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(15) "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(16) "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if the containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the 21 USC 341 to 345.

(17) "Perishable food" means food of a type or in a condition or physical state that it may spoil or otherwise become unfit for human consumption.

(18) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2).

(19) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinium.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinium cannot occur.

(20) "Pushcart" means a nonself-propelled vehicle limited to serving nonpotentially hazardous foods or commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(21) "Reconstituted" means dehydrated food products combined with water or other liquids.

(22) "Safe temperature" means, if considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or less.

(23) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(24) "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(25) "Seasonal restricted food concession" means any food service establishment which operates for not longer than eight (8) consecutive months in one (1) year; and shall prepare and serve only nonpotentially hazardous foods, except that plain frankfurters with bread and nachos with cheese sauce may be served. It shall not include concessions or establishments which serve only prepackaged, snack type nonpotentially hazardous foods.

(26) "Shellfish" means clams, mussels, or oysters.

(27) "Sewage" means liquid waste containing fecal material or organic material from garbage grinders.

(28) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one (1) time, one (1) person use and then discarded.

(29) "Tableware" means all multiuse eating and drinking utensils.

(30) "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, service or sale of food.

(31) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware and tableware.

(32) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2. Applicability. The requirements of this administrative regulation are applicable to all food service establishments, retail food stores, or a combination of both within the same establishment, as defined by KRS 217.015.

Section 3. Application for Permit to Operate. (1) Any person desiring to operate a food service establishment; a retail food store; or a seasonal restricted food concession shall make written application for a permit on form DFS-200 provided by the cabinet. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(2) If the application is for a retail food store and food service combined operation in one (1) establishment under one (1) ownership, the application shall:

(a) Designate: "retail food and food service combination".

(b) Include the name and address of the applicant;

(c) The location and type of the proposed food service establishment; and

(d) The signature of the applicant.

(3) If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation.

(4) Prior to approval of an application for permit, the cabinet shall:

(a) Inspect the proposed food service establishment to determine compliance with the provisions of this administrative regulation; and

(b) Issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this administrative regulation.

Section 4. Food Supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and

food labeling. The use of food and food products canned, prepared or processed in the home is prohibited.

(2) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law and administrative regulation. Dry milk and milk products shall be made from pasteurized milk and milk products.

(3) All shellfish, fresh or frozen shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, mussels, clams) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and shall comply with applicable cabinet administrative regulations. Shellstock source information shall be maintained on the container until it is empty and then shall be kept on file at the establishment for ninety (90) days.

(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; except that hard-boiled peeled eggs, commercially prepared and packaged, may be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) All fish and fish products shall be from approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 5. Food Protection. (1) Food shall be protected while being stored, prepared, displayed, served, or transported from potential contamination including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or condensation. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary periods of preparation and service. Shell eggs shall be stored at forty-five (45) degrees Fahrenheit or below.

(2) Precluding unsafe additives. Food shall be protected against contamination resulting from the addition of unsafe or unapproved food or color additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Subchapter B, Part 170 - Food Additives.

(3) Spoiled, damaged, returned or detained food items shall be segregated from other foods pending final disposition. A designated area shall be established for temporarily holding returned and damaged food items awaiting disposition. The area shall be marked or identified as, "Not for sale or consumption".

(4) In the event of fire, flood, power outage, water cutoff, or similar catastrophic event that might result in the contamination of food, or that might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the cabinet. Upon receiving notice of this occurrence, the cabinet shall take whatever action that it deems appropriate to protect the public health.

Section 6. Food Storage. (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(2) Containers of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

(a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated if the food container is not exposed to floor moisture;

(b) Containers may be stored on dollies, racks or pallets, provided the equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or nonpotable water lines, except for automatic fire protection sprinkler heads. Food shall not be stored in toilet rooms or toilet room vestibules.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking. Food shall be stored in a way that protects it from cross-contamination.

(5) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice or water.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of forty-five (45) degrees Fahrenheit or below during storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers.

(8) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit or below.

(10) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils, except that the ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head, provided: tubes, cold plates and etc., are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of 140 degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit or above except during necessary periods of preparation and the hot potentially hazardous foods to be transported shall be held at an internal

temperature of 140 degrees Fahrenheit at all times during transportation.

Section 7. Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served; this requirement shall not apply to whole, uncut fruits and raw vegetables for sale in retail food stores.

(3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:

(a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(c) Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate customer.

(4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to forty-five (45) degrees Fahrenheit or below.

(8) Metal stem-type numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods.

(9) Potentially hazardous foods shall be thawed:

(a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(c) In a microwave oven only if the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or if the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

Section 8. Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service.

(2) Food, except raw fruits and vegetables, on display shall be protected from consumer contamination by the use of package overwrapping; counter service line or salad bar food guards; display cases; or other effective means.

(3) Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement if the refilling process is contamination free. Clean tableware shall be made available and a sign shall be posted in self-service food area to inform customers of this requirement.

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(a) Stored in food containers with the food they are being used to serve; or

(b) Stored clean and dry; or

(c) Stored in running water; or

(d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination.

(6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents.

(7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. If a bulk dispenser for milk or milk products is not available and portions of less than one-half (1/2) pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (1/2) gallon capacity.

(8) Cream, half and half, or nondairy creamers or whitening agents shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for that service; milk, cream, half-and-half or nondairy creamers in unopened commercially filled containers may be sold without restriction as to container size in retail food stores.

(9) Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Section 9. Food Transportation. During transportation, food and food utensils shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this administrative regulation relating to protection and storage of food. Cold, potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.

Section 10. Employee Health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 39 of this administrative regulation.

Section 11. (1) Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(2) Hand washing shall take place at a hand-washing lavatory or designated service sink and not at food preparation sink or at a warewashing sink.

Section 12. Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Hairnets, hats, scarfs, or similar hair coverings that effectively

restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

Section 13. Employee Practices. (1) Employees shall eat food, drink, or use tobacco only in designated areas. The area shall not be designated if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(2) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(3) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

(4) Employees shall remove all insecure jewelry, and during periods if food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 14. Equipment and Utensils Materials. (1) Multiuse equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Singleservice articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equivalently nonabsorbent materials that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, salad bowls, bakers' tables, and wooden paddles in confectionery operations for pressure scraping kettles if manually preparing confections at a process temperature of 230 degrees Fahrenheit or above. The use of wood as a food-contact surface under other circumstances is prohibited, except in the case of single service articles such as chopsticks, coffee stirrers, ice cream spoons and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) Mollusk and crustacea shells may be used only once as a serving container. Further reuse of the shells for food service is prohibited.

Section 15. Equipment and Utensils Design and Fabrication. (1) All equipment and utensils, including plastic ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of threads shall be minimized.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of a material and in repair to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacement.

Section 16. Equipment Installation and Location. (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of

this administrative regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic. Equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 17. Equipment and Utensil Cleaning and Sanitization. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking and filtering devices and systems. Food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food-contact surfaces shall be clean, dry, and used for no other purpose. Moist cloths used for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section. Moist cloths, or sponges, used for cleaning nonfood-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) If manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a)1 through 4 of this subsection.

(a) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170 degrees Fahrenheit; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy- five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean solution containing at least twelve and five-tenths (12.5) parts per million of available iodine and having a pH not higher than five (5.0) and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a)4 of this section if used for immersion sanitization in the case of equipment too large to sanitize by immersion.

(b) If chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "B", Substances Utilized to Control the Growth of Microorganisms, Section 178.1010 Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(c) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; retail food establishments that were operating with a valid and effective permit prior to the effective date of this administrative regulation not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the cabinet. Sinks shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion. Those retail food stores that do not cut, process or package any foods, but purchase and offer for sale only prepackaged foods shall not be required to provide a three (3) compartment sink.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the warewashing facilities.

(e) If hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees Fahrenheit; and

2. A numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit convenient to the sink that can be used for frequent checks of water temperature; and

3. Dish baskets of a size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(8) If mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion warewashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(a) The pressure of water supplied to spray-type warewashing machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.

(b) Easily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in warewashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(d) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to

interfere with the proper use of the warewashing facilities.

(e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a warewashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All warewashing machines shall be thoroughly cleaned at least once a day or more often if necessary to maintain them in a satisfactory operating condition.

(9) If chemicals are used for sanitization, they shall be automatically dispensed in concentration and for a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120 degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.

(10) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting the time and temperature requirements as are acceptable by the cabinet. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:

1. Wash temperature: 165 degrees Fahrenheit.
2. Final rinse temperature: 165 degrees Fahrenheit.

(c) Single tank, conveyor machine:

1. Wash temperature: 160 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(d) Multiple tank, conveyor machine:

1. Wash temperature: 150 degrees Fahrenheit.
2. Pumped rinse temperature: 160 degrees Fahrenheit.
3. Final rinse temperature: 180 degrees Fahrenheit.

(e) Single tank, pot, pan, and utensil washer (either stationary or moving rack):

1. Wash temperature: 140 degrees Fahrenheit.
2. Final rinse temperature: 180 degrees Fahrenheit.

(11) All equipment and utensils shall be air-dried.

Section 18. Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and movable equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. This requirement does not apply to automatic fire protection sprinkler heads.

(a) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.

(b) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.

(3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.

(4) Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination.

(a) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination. Storage shall not be in toilet rooms or vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(b) Single-service articles shall be used only once.

Section 19. Sanitary Facilities and Controls. (1)(a) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.

(b) If a public water supply of a municipality or a water district is not available, the supply for the establishment shall be developed and approved pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 8.

(c) If a public water supply of a municipality or water district becomes available, connections shall be made to it and the private supply shall be discontinued.

(d) Retail food stores holding a valid and effective permit prior to the effective date of this administrative regulation shall not be required to have hot and cold running water if:

1. Only prepackaged foods are sold; or
2. Cutting and slicing is limited to ready-to-eat, cold-cut foods, and performed in a sanitary manner complying with this administrative regulation.

(e) Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed.

(f) Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "D", Specific Usage Additives Section 173.310 Boiler Water Additives.

(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and administrative regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.

(3) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated pursuant to applicable laws and administrative regulations.

Section 20. Sewage. All sewage shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 5 or the Cabinet for Human Resources administrative regulations 902 KAR Chapter 10; if a public sewerage system becomes available, connections shall be made thereto and the private sewerage system shall be disconnected. Only nonwater-carried disposal methods which have been approved by the cabinet for temporary use shall be used.

Section 21. Plumbing. (1) All plumbing shall be sized, installed, and maintained pursuant to the State Plumbing Code, KRS Chapter 318. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated. All reservoir-type and other produce foggers or misters shall be operated, maintained, and cleaned in a manner consistent with the manufacturer's most recent specifications.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed pursuant to applicable state laws and administrative regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 22. Toilet Facilities. (1) In existing food service establishments, adequate toilet facilities shall be provided and shall be so located as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided pursuant to the requirements of the State Plumbing Code, KRS Chapter 318.

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be solid, tight fitting, and self- closing, and shall be closed except during cleaning or maintenance. Doors may be louvered if installed pursuant to the State Fire Marshal's administrative regulations.

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 23. Lavatory Facilities. (1) Lavatories shall be installed pursuant to the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall be conveniently located within the food preparation area and warewashing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand washing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

Section 24. Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leak-proof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment if protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered if not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food-preparation areas. In new establishments, suitable facilities, including hot water and detergent, shall be provided and used for washing containers.

(5) The garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent- proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to administrative regulations 401 KAR Chapter 63 of the Cabinet for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly.

(10) Nonsewage liquid waste shall be disposed of in a manner that will not create a public health nuisance.

Section 25. Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in a condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 26. Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(2) Carpeting, if used, shall be properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, and in warewashing areas where it would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material on the floors in food processing areas is prohibited.

(4) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening, or equipped with a floor drain.

(6) Mats and duckboards shall be of nonabsorbent, grease resistant materials and of a size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

(7) In all new establishments utilizing concrete, terrazzo, ceramic tile or similar material, and where water flush cleaning methods are used, junctures of walls with floors shall be coved and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one 1/32 of an inch.

(8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and warewashing areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations except by special plan approval by the cabinet.

(11) Studs, joists, and rafters shall not be exposed in walk-in refrigerators, food preparation areas, warewashing areas and in toilet rooms except by special plan approval by the cabinet.

(12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 27. Cleaning Physical Facilities. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods if the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered, readily accessible service sinks or curbed cleaning facilities shall be provided.

Section 28. Lighting. (1) At least thirty (30) foot-candles of natural or artificial light shall be provided to all working surfaces and to all other surfaces and equipment in food preparation, warewashing, and hand washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and facilities where utensils and equipment are cleaned and stored. Shatter proof bulbs may be approved by the cabinet without further shielding. Heat lamps shall be protected by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 29. Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke and fumes. Ventilation systems shall be installed and operated according to applicable state laws and administrative regulations and, if vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 30. Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for warewashing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 31. Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in retail food establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled pursuant to the requirements of applicable law.

(3) Insecticides and rodenticides shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose.

(4) Working containers used for storing cleaners and sanitizers taken from bulk supplies shall be identified with the common name of the material.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated by spacing or partitioning from, and not stored above, food, single service articles or single use articles intended for use with food.

(6) Detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, lubricants and other chemicals shall not be stored above or intermingled with food equipment, utensils, single service articles, single use articles intended for use with food, except that: this requirement does not prohibit the convenient location and availability of cleaning and sanitizing agents at warewashing facilities.

(7) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on the surfaces, or in a way that constitutes a hazard to employees or other persons.

(8) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with the manufacturer's labeling. All pesticides and other materials whose label has a "warning" statement or displays the "skull and crossbones" and any other hazardous product that may be designated by the cabinet shall be handled and bagged separately at

check-out counters.

(9) Personal medications shall not be stored in food storage, preparation, or service areas.

(10) First aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

Section 32. Premises. (1) Retail food establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of the establishment shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and warewashing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind or other persons with physical limitations shall be permitted in dining areas.

Section 33. Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this administrative regulation, except as provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and if no health hazard will result, may waive or modify requirements of this administrative regulation relating to physical facilities, except those requirements of subsections (4) and (5) of this section and Sections 34 and 35 of this administrative regulation.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this administrative regulation or beverages that are not potentially hazardous and are dispensed from protected equipment need not comply with requirements of this administrative regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary; however, frankfurters may be prepared and served from these units or pushcarts.

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand washing, pursuant to the requirements of this administrative regulation. The water inlet shall be located in a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code, KRS Chapter 318.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least 100 percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank if the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 34. Commissary. (1) Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with this administrative regulation; mobile food units equipped with a potable water supply system under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.

(2) Mobile retail food stores that sell only prepackaged, commercially prepared, sealed, and protected ready-to-eat foods, shall not be required to operate from a fixed retail food establishment.

Section 35. Mobile Food Unit or Pushcart Servicing Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 5 and the Cabinet for Human Resources administrative regulations 902 KAR Chapter 10; if a public sewerage system becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 36. Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of this administrative regulation, except as otherwise provided in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and if no health hazard will result, may waive or modify requirements of this administrative regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a

temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this administrative regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food grade plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and if used, it shall be dispensed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for the equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for hand washing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of nonpotentially hazardous beverages may be stored if the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee hand washing. Where water under pressure is unavailable, the facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than is necessary for the particular operation conducted. If flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 37. Seasonal Restricted Food Concessions. (1) A seasonal restricted food concession shall comply with the requirements of this administrative regulation except as otherwise provided in this section. If no health hazard will result, the cabinet may waive or modify requirements of this administrative regulation except those requirements of subsections (2) to (14) of this section.

(2) Only nonpotentially hazardous foods shall be prepared and served by seasonal restricted food concessions except that plain frankfurters may be served with bread. Frankfurters may be heated by steaming or boiling; grilling shall be prohibited. Nachos with cheese sauce may be served. Seasonal restricted food concessions shall provide only single service articles for use by consumers. Condiments such as catsup, mustard, and relish shall be obtained from approved commercially prepared sources and shall be provided in individually prepackaged portions or dispensed from protected pump or squeeze-type dispensers only. The preparation or service of meat or artificial meat sauces shall be prohibited. The use of food or food products canned, prepared or processed in the home is prohibited.

(3) Reconstitutable products or ingredients which contain milk or egg components shall have been made from pasteurized products. Cheese sauce for nachos shall be obtained from commercially approved sources.

(4) Flavorings made from concentrate shall not be formulated or mixed in the home; preparation shall be accomplished in the seasonal restricted food concession or other permitted retail food establishment.

(5) Equipment and utensil cleaning and sanitization. Cleaning and sanitizing of food equipment and utensils shall be accomplished in a manner that complies with applicable requirements of Section 17 of this administrative regulation. In seasonal restricted concessions where running water and sewerage are impracticable and where only the use of basic utensils such as knives, tongs, or scoops is necessary, utensil washing facilities shall consist of three (3) containers sufficiently large enough for immersion of the utensils requiring washing; the first for hot detergent wash, the second for clean rinse, and the third for a sanitizing rinse. The cleaning and sanitizing of flavoring containers and equipment in the home or other nonpermitted location shall be prohibited.

(6) Equipment and utensil storage. All cleaned and sanitized utensils and equipment in a seasonal restricted food concession shall be stored and handled consistent with requirements of Section 18 of this administrative regulation.

(7) Sanitary facilities and controls.

(a) If running water is available it shall be potable, adequate and from a supply approved pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 8.

(b) All water not provided by pipe to the establishment shall be obtained from an approved source, shall be potable, shall be transported in protected food grade bulk containers and shall be of sufficient quantity for the operation. Hot water, at least ninety-five (95) degrees Fahrenheit, shall be provided for utensil and hand washing. An insulated container may be used. A push button or turn spout shall be provided through which potable water may be drawn from the storage container for hand and utensil washing.

(8) Liquid waste. All nonsewage liquid shall be collected and disposed of in accordance with applicable requirements of Section 24 of this administrative regulation.

(9) Plumbing and toilet facilities.

(a) All plumbing shall comply with applicable provisions of the State Plumbing Code, KRS Chapter 318.

(b) Sanitary toilet facilities shall be provided for employees and shall comply with the requirements of the State Plumbing Code, KRS Chapter 318, and Section 22 of this administrative regulation; provided that where an approved sewage system with running water is impracticable, commercial type portable toilet facilities shall be provided for employees and shall be serviced and maintained in a sanitary manner.

(c) Written permission shall be obtained and made available for health authority review, for use of convenient toilet facilities if not owned by the seasonal restricted food concession operator.

(10) Hand washing facilities.

(a) Where running water is impracticable an ample supply of water, as described in subsection (7) of this section, shall be provided for washing hands. Wastewater shall be collected and disposed of in a manner that will not create a public health nuisance.

(b) If a seasonal restricted food concession is located adjacent or connected to a facility with existing approved water and sewerage facilities properly plumbed hand-washing facilities shall be provided conveniently located for employees where the operation requires manual contact with food.

(11) Garbage and refuse. Garbage and refuse shall be collected, stored and disposed of in accordance with the requirements of Section 24 of this administrative regulation.

(12) Construction, maintenance, and cleaning of physical facilities.

(a) Construction, maintenance and cleaning shall be carried out in accordance with applicable requirements of Sections 26 and 27 of this administrative regulation except as provided in paragraphs (b)

and (c) of this subsection.

(b) Seasonal restricted food concessions which are located in open-air areas shall be completely enclosed or equipped with an eighteen (18) inch maximum high service opening that is either self-closing or equipped with an air current to preclude the entry of flying insects when prevalent.

(c) Floors shall be made of concrete, tightwood, asphalt, or other similar cleanable material; gravel or dirt floors shall be prohibited.

(13) Plan review. If a seasonal restricted food concession is constructed or extensively remodeled, or if an existing structure is converted for use as a seasonal restricted food concession, appropriate plans with specifications for the construction, remodeling or alteration showing size, location, type of interior wall, ceiling and floor construction including the method of outer opening protection shall be submitted to the cabinet for review and approval before construction is begun.

(14) Inspection frequency. The cabinet shall inspect each seasonal restricted food concession at the time of initial permit issuance and at least once during each eight (8) month period of operation thereafter, with as many additional inspections and reinspections as necessary.

Section 38. Plan Review of Future Construction. When a retail food establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a retail establishment, properly prepared plans and specifications for construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the cabinet for approval before work is begun.

Section 39. Procedure If Infection is Suspected. If the cabinet has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of the body discharges of employees.

Section 40. Food Caterers Must Display Permit Number. Each catering kitchen or similar food service establishment shall have posted in letters at least three (3) inches high the establishment's permit number clearly visible on vehicle(s) used in transporting foods. A copy of the establishment's permit to operate shall also be carried in each vehicle at all times. The permit number shall be declared in all forms of advertisements or promotional materials used by food service catering establishments.

Section 41. Enforcement Provisions. (1) If the cabinet has substantial reason to believe that an imminent public health hazard exists, or if the permit holder or an authorized agent has interfered with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In this event, the permit holder may request a hearing on form DFS-212. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. [~~A hearing shall be granted as soon as practical, or in any event not to exceed seven (7) days.~~]

(2) In all other instances of violation of the provisions of this administrative regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. If a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the cabinet may suspend the permit. The permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet, by the permit holder, within the ten (10) day period.~~] Where there is a combination food service and retail food store, permit suspension shall apply only to the operation in violation of requirements.

(3) Any person whose permit has been suspended may, at any time, make application on form DFS-215 for a reinspection for the purpose of reinstatement of the permit. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the reinspection reveals that the conditions causing suspension of the permit have been corrected, the permit shall be reinstated.

(4) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to this action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet, by the permit holder, within the ten (10) day period.~~] A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this administrative regulation shall be deemed to have been properly served if the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this administrative regulation shall be conducted by the cabinet at a time and place designated by it. An appellant may examine the record of evidence in support of the action of the cabinet. During the hearing, an appellant may be represented by counsel, may cross-examine witnesses and may offer evidence in his behalf. Based upon the record of the hearing, the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs and a request is made at the time a hearing is requested.~~]

(7) At least once every six (6) months, the cabinet shall inspect each establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation. Retail food stores offering only prepackaged foods for sale shall be inspected at least once each twelve (12) months, with as many additional inspections and reinspections as necessary. Seasonal restricted food concessions shall be inspected at least once during the eight (8) month permitted period of operation

each year.

(8) If an inspection is made of an establishment, the findings shall be recorded on inspection report form DFS-208, provided for that purpose, and shall constitute a written notice to the permit holder. This form is incorporated by reference and may be viewed at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, pursuant to the following provisions:

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) If the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

(d) If the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet, by the permit holder, within such ten (10) day period.~~]

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In this event the permit holder may request a hearing [~~which shall be granted as soon as practical~~].

(f) The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed in accordance with 902 KAR 1:400. [~~within ten (10) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.~~]

(g) If a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

Section 42. Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this administrative regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992.

Section 43. The provisions of this administrative regulation shall apply to both food service establishments and retail food stores, unless otherwise specified.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: Total: 23,480.
Seasonal Restricted - 80
Temporaries - 3,100
Food Service - 12,400
Retail Food Est. - 3,000
Retail Markets - 4,900

(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: None 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: None 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 increase.
2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.
2. Continuing cost or savings: No change.
3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from permits to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement

actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering is applied where numbers of facilities, the size of the facilities,
and the generic operations of the facilities make tiering feasible. Excluded from tiering are: seasonal restricted and temporary food operation.

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. Local health department environmentalists carry out the provisions of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Local health departments, environmental health programs. Local health department environmentalists carry out the environmental health programs.

4. How does this administrative regulation affect the local government or any service it provides? Local health department environmentalists conduct surveillance and enforcement activities of all Environmental Health Programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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 Environmental Health and Community Safety
(Amendment)

902 KAR 45.006. Kentucky bed and breakfast administrative regulation.

RELATES TO: KRS 217.005 to 217.215, 217.992

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 217.125, EO 95-79

NECESSITY AND FUNCTION: KRS 217.215(1) authorizes the Secretary of the Cabinet for Health Services [~~Human Resources~~] to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act. The function of this administrative regulation is to establish a uniform code for the regulation of food service operations of all bed and breakfast establishments within the Commonwealth of Kentucky for the purpose of protecting the public health. Executive Order 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.

Section 1. Definitions. (1) "Secretary" means the Secretary of the Cabinet for Health Services [~~Human Resources~~].

(2) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~] or its designee.

(3) "Bed and breakfast establishment" means a bed and breakfast home or a bed and breakfast inn.

(4) "Bed and breakfast home" means a private owner-occupied house where up to five (5) guest rooms are provided and in which the only meal served to guests is breakfast.

(5) "Bed and breakfast inn" means a private inn or other unique residential facility where not more than nine (9) guest rooms are provided and in which the only meal served to guests is breakfast. The innkeeper resides on the premises or property immediately adjacent to it during periods of occupancy.

(6) "Continental breakfast" means a breakfast meal restricted to the following foods:

(a) Beverages such as coffee, tea and fruit juices;

(b) Pasteurized Grade A milk;

(c) Fresh fruits;

(d) Frozen and commercially processed fruits;

(e) Baked goods, such as pastries, rolls, breads, and muffins which are nonpotentially hazardous food;

(f) Cereals;

(g) Jams, jellies, honey, sorghum syrup and other table syrups;

(h) Pasteurized Grade A creams and butters, nondairy creamers or similar products;

(i) Commercially manufactured hard cheeses, commercially manufactured cream cheese and commercially manufactured yogurt.

(7) "Full breakfast" means a breakfast meal including foods other than those listed in the definition of "continental breakfast".

(8) "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.

(9) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinum.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

Section 2. Application for a Permit to Operate; Fees. (1) Any person desiring to operate a bed and breakfast establishment shall make written application for a permit on form DFS-200 provided by the cabinet. Such application shall include the name and address of the applicant, the location and type of the proposed establishment, and the signature of the applicant. Prior to approval of an application for a permit, the cabinet shall inspect the proposed establishment to determine compliance with the provisions of this administrative regulation. The cabinet shall issue a permit to operate if the inspec-

tion reveals that the establishment complies with the requirements of the administrative regulation.

(2) Each permit to operate a bed and breakfast establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

(3) Each permit to operate a bed and breakfast establishment unless previously suspended or revoked shall expire on December 31, following date of issuance and be renewable annually upon application accompanied by the required fee as follows:

(a) Bed and breakfast establishments that provide a full breakfast - sixty-five (65) dollars;

(b) Bed and breakfast establishments that serve only a continental breakfast - fifty (50) dollars.

Section 3. Food Supplies. (1) Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment is prohibited.

(2) Fluid milk and fluid milk products used shall be pasteurized and shall comply with applicable law. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a bed and breakfast establishment.

(3) Only clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.

(4) Only ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

Section 4. Food Protection. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, unclean equipment or utensils, unnecessary hand contact, draining, or overhead leakage or condensation, dust, coughs and sneezes or other agents of public health significance.

(2) The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary times of preparation or service.

(3) Hermetically sealed packages shall be handled so as to maintain product and container integrity.

(4) Pets may be present on the premises, but should not be permitted in the kitchen and shall be kept out of food preparation and dining areas during food preparation and service to the public.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during food preparation and service.

(6) Cooking facilities in the residential kitchen shall not be available to guests.

Section 5. Food Preparation. (1) Food shall be prepared with a minimum of manual contact. Food shall be prepared on food-contact surfaces and with utensils that are clean and have been sanitized.

(2) Raw fruits and raw vegetables that will be cooked, cut or combined with other ingredients or that will be otherwise processed into food products by the food establishment shall be thoroughly cleaned with potable water before being used.

(3) Potentially hazardous food processed by cooking shall be cooked to heat all parts of the food to a minimum temperature of 140 degrees Fahrenheit.

(4) For kitchens in bed and breakfast establishments serving a continental breakfast only, ingredients which are potentially hazardous such as milk, cream, and eggs, may be used in food preparation provided the final product is not a potentially hazardous food. For example, stove top skillet, or microwave produced items such as pancakes, waffles, and french toast are prohibited.

(5) For kitchens in bed and breakfast establishments serving a full breakfast, potentially hazardous foods shall be cooked and immediately served to guests. The following food handling practices shall be prohibited here:

(a) Cooling and reheating prior to service.

(b) Hot holding for more than two (2) hours.

(c) Service of leftovers.

(6) Potentially hazardous foods shall be thawed:

(a) In refrigerated units at a temperature not to exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process if the food is less than or equal to three (3) pounds.

Section 6. Food Display and Service. (1) Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of packaging, or by the use of easily cleanable display cases, serving line or salad bar protector devices, covered containers for self-service, or by other effective means. Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for consumer self-service in bed and breakfast establishments serving a continental breakfast only.

(2) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, or in dispensers or containers except that, for table service, catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.

(3) Ice for consumer use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them for contamination.

(4) Once served to a consumer, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served. However, single-service creamers and completely wrapped pats of butter or margarine may be reserved if still packaged and in sound condition.

Section 7. Employee Health and Practices. (1) No employee, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while affected with a boil, infected wound, or acute respiratory infection, shall work in a bed and breakfast establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(2) Employees engaged in food preparation, service and warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

(3) Employees shall wear clean outer clothing.

(4) Hairnets, hats, scarfs or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas

of bed and breakfast establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

(5) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

(6) Employees shall consume food or use tobacco only in designated areas. Such designated areas shall not be located in food preparation areas or in areas where the eating or tobacco use of an employee may result in contamination of food, equipment, or utensils.

(7) All employees shall wash their hands thoroughly with soap and warm water in an adequate hand-washing facility before starting work and as often as necessary to remove soil and contamination. The hands of all employees shall be kept clean while engaged in handling of food and food-contact surfaces.

Section 8. Equipment and Utensils. (1) Equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food.

(2) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods are permitted for repeated use.

(3) Single-service articles shall not be reused.

(4) All equipment and utensils shall be maintained in good repair.

Section 9. Equipment and Utensils/Cleaning and Sanitization. (1) Food utensils and equipment shall be stored in a manner to avoid contamination.

(2) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(3) Food-contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

(4) Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(5) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove food particles and soil.

(6) Manual cleaning and sanitizing shall be conducted as follows:

(a) For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The regulatory authority may allow the use of compartments other than sinks.

(b) All five (5) steps of the warewashing process shall be completed: prerinsing or scraping; application of cleaners for soil removal; rinsing to remove any abrasives and remove or dilute cleaning chemicals; sanitization; air-drying and draining.

(c) A sanitizing method approved by applicable provisions of the state retail food code shall be used.

(d) Wash, rinse and sanitizing solutions shall be maintained in a clean condition.

(e) The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

(f) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by law and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used at least once each business day and each time the sanitizing solution is changed.

(7) Mechanical cleaning and sanitizing shall be conducted as follows:

(a) Commercial dishwashers must comply with applicable provisions of the state retail food code.

(b) A domestic or homestyle dishwasher may be used provided the following performance criteria are met:

1. The dishwasher must effectively remove physical soil from all surfaces of dishes.

2. The dishwasher must sanitize dishes by the application of sufficient accumulative heat.

3. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150 degrees Fahrenheit after the final rinse and drying cycle.

4. The dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing kitchen facilities' utensils and tableware; a copy of the instructions must be available on the premises at all times.

(8) There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, hand washing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air-dried.

Section 10. Water Supply and Sewage Disposal. (1) Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection.

(2) Bottled and packaged potable water shall be obtained from a source that complies with applicable provisions of the Cabinet for Natural Resources and Environmental Protection and the cabinet and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the original container.

(3) All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

Section 11. Toilet Facilities for Employees. (1) Toilet facilities shall be installed pursuant to requirements of the State Plumbing Code, shall be conveniently located, and shall be accessible to employees at all times.

(2) Bathrooms opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by window(s) or by mechanical means. A soap dispenser and disposable towels shall be provided for hand washing in bathrooms used by food handlers.

(3) Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

Section 12. Hand-washing Facilities for Employees. (1) Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code and shall be conveniently located.

(2) Each hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

(3) A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facilities.

(4) A soap dispenser and disposable towels for use in hand washing shall be provided at the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the toilet, hands shall be first washed in an approved hand-washing facility before they are washed in the kitchen sink.

(5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Section 13. Floors, Walls, Ceilings, and Lighting. The floors, walls, and ceilings and attached equipment in food preparation and service areas and in employee bathrooms of bed and breakfast establishments shall be fabricated from easily cleanable material, shall be maintained in good repair and clean. Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

Section 14. Insect and Rodent Control. (1) Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

(2) Pesticides and rodenticides.

(a) No person shall apply insecticides or rodenticides except:

1. In accordance with applicable requirements of Kentucky Department of Agriculture's Pesticide Use and Application Act; and

2. In accordance with the manufacturer's labeling; and

3. In such a way that food, food-contact surfaces, and the supply of potable water are not contaminated.

(b) No open pesticide or rodenticide bait boxes shall be used.

(c) Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils and all containers of toxic material shall be clearly labeled for easy identification.

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(3) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the attraction of pests.

Section 15. Plan Review of Future Construction. When the kitchen or employee bathroom facilities of a bed and breakfast establishment are hereafter constructed or extensively remodeled, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, and construction materials and the location, size and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 16. Inspections; Notices. (1) Inspections. At least once every twelve (12) months, the cabinet shall inspect each bed and breakfast establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. Whenever the cabinet makes an inspection of a bed and breakfast establishment, its representative shall record the findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection report form to the permit holder or his representative in charge.

(3) Issuances of notices. Whenever the cabinet makes an inspection of a bed and breakfast establishment and determines that any of the requirements of this administrative regulation have been violated, the cabinet shall notify the permit holder or person in charge of such violations by means of an inspection report form or other written notice. In such notification, the cabinet shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of the violations found pursuant to the following provisions:

1. When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

2. When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

4. When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of such notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period.

5. The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed in accordance with 902 KAR 1:400. [~~within ten (10) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.~~]

(c) State that failure to comply with any notice issued in accordance with the provisions of this administrative regulation may result in suspension of the permit.

(d) State that an opportunity for appeal from any notice of inspection findings will be provided if a written request for a hearing is filed with the cabinet within ten (10) days following the service of the notice for correction.

(4) Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the cabinet.

Section 17. Suspension and Revocation of Permits. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the cabinet in the performance of its duties, or if the establishment rating score is less than sixty (60), the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing [~~which shall be granted as soon as practicable~~].

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet by the permit holder within such ten (10) day period.~~]

(3) Reinstatement of suspended permits. Any person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this administrative regulation, the permit shall be reinstated.

(4) Revocation of permits. For serious or repeated violations of

any of the requirements of this administrative regulation or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet, by the permit holder, within such ten (10) day period.~~] A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.~~]

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: 140

(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: None 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: None 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 increase.

2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.

2. Continuing cost or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from permits to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied due to the number of facilities, the size of the facilities, and the generic operations of the facilities.

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. Local health department environmentalists carry out the provisions of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Local health departments, environmental health programs. Local health department environmentalists carry out the environmental health programs.

4. How does this administrative regulation affect the local government or any service it provides? Local health department environmentalists conduct surveillance and enforcement activities of all environmental health programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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 Environmental Health and Community Safety
(Amendment)

902 KAR 45:020. Shellfish.

RELATES TO: KRS Chapter 217
STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 217.125, EO 95-79
NECESSITY AND FUNCTION: KRS Chapter 217 authorizes the Cabinet for Health Services [~~Human Resources~~] to protect the public against the adulteration and misbranding of foods. The purpose of this administrative regulation is to establish uniform sanitary standards and permit requirements for shellfish repacking, and to establish uniform standards of identity for shellfish and frozen raw breaded shrimp. Executive Order 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.

Section 1. Definitions. (1) "Shellfish" means clams, mussels, or oysters.

(2) "Shell oysters" means live oysters of any of the species, Ostrea virginica, Ostrea gigas, Ostrea lurida, in the shell, that, after removal from their beds, have not been floated or otherwise held under conditions that result in the addition of water.

(3) "Shrimp" means the tail portion of prepared shrimp of commercial species.

(4) "Thoroughly drained" means one of the following:

(a) The oysters are drained on a strainer or skimmer that has an area of not less than 300 square inches per gallon of oysters, drained, and has perforations of at least one-fourth (1/4) of an inch in diameter and not more than one and one-fourth (1 1/4) inches apart, or perforations of equivalent areas and distribution. The oysters are distributed evenly over the draining surface of the skimmer and drained for not less than five (5) minutes; or

(b) The oysters are drained by any method other than that prescribed by paragraph (a) of this subsection whereby liquid from the oysters is removed so that if the oysters are tested within fifteen (15) minutes after packing by draining a representative gallon of oysters on a skimmer of the dimensions and in the manner described in paragraph (a) of this subsection for two (2) minutes, not more than five (5) percent of liquid by weight is removed by draining.

Section 2. Shellfish Repacking Plant Permit. (1) No person, firm or corporation shall repack shucked or raw oysters unless a permit to repack has been issued by the cabinet.

(2) Any person desiring to operate a shellfish packing establishment shall make written application for a permit to operate on Form DFS-200 provided by the cabinet which is incorporated by reference and may be obtained at the commissioner's office, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m.

(3) The permit issued by the cabinet shall list the name, address, certificate number, classification and shall expire December 31, following date issued.

(4) A permit issued to a repacker shall not be transferable as to person or place.

Section 3. Submission of Plans. Plans for an oyster repacking plant shall be submitted for approval to the local health department.

Section 4. Shellfish Repacking Plant Sanitation Requirements. (1) Plant arrangements. The repacking establishment shall be free of contaminating surroundings and shall not be subject to flooding.

(a) Repacking room shall be of sufficient size to permit sanitary handling of the oysters and thorough cleaning of equipment.

(b) A separate room or rooms or lockers, shall be provided for storing employees' street clothing, aprons, gloves, and personal articles.

(2) Floors. The floors shall be:

(a) Constructed of concrete or other material impervious to water;

(b) Graded to drain;

(c) Free from cracks and uneven surfaces that interfere with proper cleaning or drainage; and

(d) Maintained in good repair.

(3) Walls and ceilings. The interior surface of rooms in which shellfish are repacked, or in which utensils are washed shall be smooth, washable, light colored and kept in good repair.

(4) Fly control measures. All outer openings to the toilet and wash rooms, repacking rooms, utensil cleaning and storage rooms, and locker rooms shall be effectively screened during the season if flies are present, unless other effective means are provided for preventing the entrance of flies.

(a) Effective in-plant fly control measures shall be used to kill or capture flies which may enter the plant despite the screening.

(b) All interior doors or other openings into the repacking room shall be screened if necessary to keep the packing room free of flies.

(5) Lighting.

(a) At least thirty (30) foot-candles of light shall be provided on all working surfaces and at least twenty (20) foot-candles in all storage rooms.

(b) Light bulbs, fixtures, skylights or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(6) Heating and ventilation. Working rooms shall be ventilated and shall be heated if necessary.

(7) Water supply. The water supply shall be potable, adequate and from an approved source pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection administrative regulations 401 KAR Chapter 8.

(8) Plumbing and related facilities. Plumbing shall be installed in compliance with the State Plumbing Code, KRS Chapter 318. Lavatories with water shall be so located that their use by repacking plant personnel can be readily assessable. Conveniently located toilets shall be provided.

(9) Sewage disposal. Sewage shall be discharged into public sewers, if available. Where private sewage disposal systems must be utilized, they shall be constructed, operated and maintained according to the requirements of 902 KAR 10:085.

(10) Rodent control. Shellfish repacking plants shall be free from rodents.

(11) Construction of utensils and equipment.

(a) The food-product zone of utensils and equipment, including that used for ice handling, shall be made of smooth, corrosion resistant, impervious, nontoxic material which will not readily disintegrate or crack;

(b) Utensils and equipment shall be constructed to be easily cleaned; and

(c) Shall be kept in good repair.

(12) General cleanliness.

(a) Premises shall be kept clean and free of litter and rubbish.

(b) Miscellaneous and unused equipment and articles which are not necessary to plant operations shall not be stored in rooms used for repacking or food storage.

(c) No domestic animal or fowl shall be permitted in a shellfish repacking plant.

(d) The repacking portions of the plant, if in operation, shall be restricted to the handling of shellfish.

(e) Unauthorized persons shall be excluded from the plant.

(13) Cleaning of buildings and equipment.

(a) Floors, equipment, and walls of the repacking room shall be cleaned within two (2) hours after the day's operations have ceased.

Windows and skylights shall be kept clean.

(b) Equipment, utensils and work surfaces shall be cleaned by scrubbing with water and detergent and rinsing with potable water within two (2) hours after the day's operations have ceased.

(14) Bactericidal treatment of utensils and equipment.

(a) Utensils and equipment in the repacking room which come in contact with shucked shellfish shall be subjected to an effective bactericidal process at the end of each day's operation.

(b) Equipment which may be contaminated before use shall be cleaned at the end of each day's operation, and shall be subjected to effective bactericidal treatment immediately before use.

(c) Returnable shipping containers, if used, shall be subjected to an effective bactericidal treatment process on the day they are used, and protected against contamination until filled.

(15) Storage of equipment. Equipment and utensils which have been cleaned and given bactericidal treatment shall be stored so as to be protected against contamination.

(16) Source of shellfish. All shellfish shall be obtained from a source certified by the state of origin or the Food and Drug Administration. Shellfish shall be obtained from certified waters and harvesting areas certified by state of origin or the Food and Drug Administration and shall be properly identified and received from a shellfish shipper currently listed on the United States Public Health Service's Interstate Shellfish Shipper's List.

(17) Handling of single-service containers. Single-service containers shall be stored and handled in a sanitary manner and shall be given bactericidal treatment immediately prior to filling.

(18) Packing of shucked shellfish.

(a) Shucked shellfish shall be packed without exposing them to contamination.

(b) Shucked shellfish shall be packed and shipped in clean, single-service containers made of impervious materials and sealed that tampering can be detected.

(c) Each individual package of fresh or frozen shellfish shall have permanently recorded on the package or label, so as to be easily visible, the packers', repackers', or distributors' name and address, and the packers' or repackers' certificate number preceded by the abbreviated name of the state.

(d) Containers holding one (1) gallon or more shellfish shall have the identification on the container wall, unless the cover becomes an integral part of the container during the sealing process. Packages of frozen shellfish shall show the date or code of repacking.

(19) Refrigeration of shucked shellfish. Shucked shellfish shall be kept at a temperature of forty-five (45) degrees Fahrenheit or less during repacking.

(20) Ice. Ice shall be obtained from a source approved by the cabinet pursuant to KRS Chapter 217, and shall be stored and handled in a manner that does not result in contamination.

(21) Records. Complete and accurate records shall be kept by every shellfish repacker.

(22) Health of personnel. Any person known to be infected with any disease in a communicable form, or to be a carrier of any disease which can be transmitted through the handling of shellfish, or who has an infected wound or open lesion on any exposed portion of his body, shall be restricted to areas of the repacking plant where there would be no danger of transmitting disease.

(23) Cleanliness of employees.

(a) Employees shall wash their hands with soap and water before beginning work and again after each interruption.

(b) Any person who handles shucked shellfish shall wear a clean apron or coat.

(c) Employees shall not use tobacco in any form in the rooms in which shellfish are repacked.

Section 5. Bacteriological Criteria for Shellfish. The following bacteriological criteria shall be applicable for all edible species of fresh and frozen shellfish at the wholesale market level.

(1) Shellfish having a fecal coliform density of not more than 230 most probable number (MPN) per 100 grams or a standard plate count of not more than 500,000 per gram shall be considered satisfactory.

(2) Shellfish having a fecal coliform density of more than 230 most probable number (MPN) per 100 grams or a standard plate count of more than 500,000 per gram shall be quarantined and disposed of.

Section 6. Handling and Sale of Shellfish. (1) No oysters, clams, scallops or other shellfish shall be sold or offered for sale unless the shipment is accompanied by tag, label, or other mark showing that shipper has been certified by the state where the plant is operated.

(2) All shippers, reshippers, packers and wholesalers shall keep an accurate record of all lots received, shipped and sold. All retailers shall keep an accurate record of all lots received.

(3) Shell oysters and clams shall be handled at a temperature below fifty (50) degrees Fahrenheit, but above freezing temperature.

(4) Shell oysters and clams shall be shipped in clean barrels, sacks, or shipping containers plainly marked with the name, address and identification mark of the shipper.

(5) Shucked oysters shall be packed in containers sealed in a manner that any tampering is easily discernible, and shall be marked with the name and address and identification mark of shipper or packer. All shipping containers shall have been washed and sterilized before being filled.

(6) For refrigeration of shucked shellfish, outside containers shall be provided for ice, and no ice or other foreign substance shall be allowed in contact with the shellfish. Shucked shellfish shall be kept at a temperature of forty-five (45) degrees Fahrenheit or below, from the time it leaves the shipper until the time it reaches the consumer. Frozen shellfish shall be held at zero degrees Fahrenheit or less.

(7) All shucked stock received by wholesalers or retailers shall be kept in the original containers, except shucked shellfish that are repacked by a certified repacker.

Section 7. Canned Oysters; Identity; Label Statement of Optional Ingredients. (1) Canned oysters shall be the food prepared from one (1) or any mixture of two (2) or all of the forms of oysters specified in subsection (2) of this section, and a packing medium of water, or the watery liquid draining from oysters before or during processing, or a mixture of liquid and water. The food may be seasoned with salt. It is sealed in containers and processed by heat as to prevent spoilage.

(2) The forms of oysters referred to in subsection (1) of this section are prepared from oysters that have been removed from their shells and washed and which may be steamed while in the shell or steamed or blanched or both after removal therefrom and are as follows:

(a) Whole oysters with broken pieces of oysters as normally occur in removing oysters from their shells, washing, and packing.

(b) Pieces of oysters obtained by segregating pieces of oysters broken in shucking, washing, or packing whole oysters.

(c) Cut oysters obtained by cutting whole oysters.

(3) If the form of oysters specified in subsection (2)(a) of this section is used, the name of the food is "Oysters" or "Cove Oysters," if of the species Ostrea virginica: "Oysters" or "Pacific Oysters," if of the species Ostrea gigas; "Oysters" or "Olympia Oysters," if of the species Ostrea lurida.

(a) If the form of oysters specified in subsection (2)(b) of this section is used, the name of the food is "Pieces of ____," the blank being filled in with the name "Oysters" or "Cove Oysters," if of the species Ostrea virginica; "Oysters" or "Pacific Oysters," if of the species Ostrea gigas; "Oysters" or "Olympia Oysters," if of the species Ostrea lurida.

(b) If the form of oysters specified in subsection (2)(c) of this section is used, the name of the food is "Cut _____," the blank being filled in with the name "Oysters" or "Cove Oysters," if of the species

Ostrea virginica; "Oysters" or "Pacific Oysters," if of the species Ostrea gigas; "Oysters" or "Olympia Oysters," if of the species Ostrea lurida.

(c) In case a mixture of two (2) or all forms of oysters are used, the name is a combination of the names specified in this section of the forms of oysters used, arranged in order of their predominance by weight.

Section 8. Canned Oysters: Fill of Container; Label Statement of Substandard Fill. (1) The standard fill of container for canned oysters shall be the drained weight of oysters taken from each container and shall not be less than fifty-nine (59) percent of the water capacity of the container.

(2) Drained weight is determined by the following method:

(a) Keep the unopened canned oyster container at a temperature of not less than sixty-eight (68) degrees Fahrenheit or more than ninety-five (95) degrees Fahrenheit for at least twelve (12) hours immediately preceding the determination.

(b) After opening, tilt the container so as to distribute its contents evenly over the meshes of a circular sieve that has been previously weighed.

(c) The diameter of the sieve is eight (8) inches if the quantity of the contents of the container is less than three (3) pounds, and twelve (12) inches if the quantity is three (3) pounds or more.

(d) The bottom of the sieve is woven-wire cloth that complies with the specifications for cloth set forth under Official Methods of Analysis of the Association of Official Analytical Chemists 13th Ed. (1990), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)", under the heading "Definitions of Terms and Explanatory Notes", which is hereby incorporated by reference. Copies may be examined at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. on weekdays.

(e) Without shifting the material on the sieve, so incline the sieve as to facilitate drainage.

(f) Two (2) minutes from the time drainage begins, weigh the sieve and the drained oysters.

(g) The weight found, less the weight of the sieve, shall be considered the drained weight of the oysters.

(3) If canned oysters fall below the standard of fill of container prescribed in this section, the label shall bear the general statement of substandard fill, followed by the statement, "A can of this size should contain _____oz. of oysters. This can contains only _____ oz." The blanks being filled in with the applicable figures.

Section 9. Oysters, Raw Oysters, Shucked Oysters; Identity. (1) Oysters, raw oysters, shucked oysters are the class of foods obtained by shucking shell oysters and preparing them with the procedure prescribed in subsection (2) of this section. The name of each food shall be the name specified in the applicable definition and standard of identity prescribed in Sections 10 through 19 of this administrative regulation.

(2) If water, or salt water containing less than 0.75 percent salt, is used in any vessel into which the oysters are shucked, the combined volume of oysters and liquid if oysters are emptied from the vessel shall not be less than four (4) times the volume of water or salt water. The total time that the oysters are in contact with water or salt water after leaving the shucker, including the time of washing, rinsing, and any other contact with water or salt water is not more than thirty (30) minutes. In computing the time of contact with water or salt water, the length of time that oysters are in contact with water or salt water that is agitated by blowing or otherwise, shall be calculated at twice its actual length. Any period of time that oysters are in contact with salt water containing not less than 0.75 percent salt before contact with oysters, shall not be included in computing the time that the oysters are in contact with water or salt water. Before packing into the containers for shipment or other delivery for consumption the oysters are thoroughly drained and are packed without any added substance.

Section 10. Extra large oysters, oysters counts (or plants), extra large raw oysters, raw oysters counts (or plants), extra large shucked oysters, shucked oysters counts (or plants) are of the species Ostrea virginica and conform to the definition and standard of identity for oysters in Section 9 of this administrative regulation and are of a size that one (1) gallon contains not more than 160 oysters and a quart of the smallest oysters selected therefrom contains not more than forty-four (44) oysters.

Section 11. Large oysters, oysters extra selects, large raw oysters, raw oysters extra selects, large shucked oysters are of the species Ostrea virginica and conform to the definition and standard of identity prescribed for oysters by Section 9 of this administrative regulation and are of a size that one (1) gallon contains more than 160 oysters but not more than 210 oysters; a quart of the smallest oysters contains not more than fifty-eight (58) oysters, and a quart of the largest oysters contains more than thirty-six (36) oysters.

Section 12. Medium oysters, oysters selects, medium raw oysters, raw oysters selects, medium shucked oysters, shucked oysters selects are of the species Ostrea virginica and conform to the definition and standard of identity prescribed for oysters by Section 9 of this administrative regulation and are of such size that one (1) gallon contains more than 210 oysters, but not more than 300 oysters; a quart of the smallest oysters contains not more than eighty-three (83) oysters, and a quart of the largest oysters contains more than forty-six (46) oysters.

Section 13. Small oysters, oysters standards, small raw oysters, raw oysters standards, small shucked oysters, shucked oysters standards are of the species Ostrea virginica and conform to the definition and standards of identity prescribed for oysters by Section 9 of this administrative regulation and are of a size that one (1) gallon contains more than 300 oysters but not more than 500 oysters; a quart of the smallest oysters contains not more than 138 oysters and a quart of the largest oysters contains more than sixty-eight (68) oysters.

Section 14. Very small oysters, very small raw oysters, very small shucked oysters are of the species Ostrea virginica and conform to the definition and standard of identity prescribed for oysters by Section 9 of this administrative regulation and are of a size that one (1) gallon contains more than 500 oysters, and a quart of the largest oysters contains more than 112 oysters.

Section 15. Olympia oysters, raw Olympia oysters, shucked Olympia oysters are of the species Ostrea lurida and conform to the definition and standard of identity prescribed for oysters in Section 9 of this administrative regulation.

Section 16. Large Pacific oysters, large raw Pacific oysters, large shucked Pacific oysters are of the species Ostrea gigas and conform to the definitions and standards of identity prescribed for oysters by Section 9 of this administrative regulation and are of a size that one (1) gallon contains not more than sixty-four (64) oysters, and the largest oyster in the container shall not be more than twice the weight of the smallest oyster therein.

Section 17. Medium Pacific oysters, medium raw Pacific oysters, medium shucked Pacific oysters are of the species Ostrea gigas and conform to the definition and standard of identity prescribed for oysters by Section 9 of this administrative regulation and are of a size that one (1) gallon contains more than sixty-four (64) oysters and not

more than ninety-six (96) oysters, and the largest oyster in the container shall not be more than twice the weight of the smallest oyster therein.

Section 18. Small Pacific oysters, small raw Pacific oysters, small shucked Pacific oysters are of the species Ostrea gigas and conform to the definition and standard of identity prescribed for oysters by Section 9 of this administrative regulation and are of a size that one (1) gallon contains more than ninety-six (96) oysters and not more than 144 oysters, and the largest oyster in the container shall not be more than twice the weight of the smallest oyster therein.

Section 19. Extra small Pacific oysters, extra small raw Pacific oysters, extra small shucked Pacific oysters are of the species Ostrea gigas and conform to the definition and standard of identity prescribed for oysters by Section 9 of this administrative regulation and are of a size that one (1) gallon contains more than 144 oysters and the largest oyster in the container shall not be more than twice the weight of the smallest oyster therein.

Section 20. Frozen Raw Breaded Shrimp. (1) Frozen raw breaded shrimp shall be prepared by coating one of the optional forms of shrimp specified in subsection (3) of this section with safe and suitable batter and breading ingredients as provided in subsection (4) of this section. The food shall be frozen.

(2) The food tests not less than fifty (50) percent of shrimp material as determined by the method prescribed in subsection (7) of this section, except that if the shrimp are composite units the method prescribed in subsection (8) of this section shall be used.

(3) Except for composite units, each shrimp unit shall be individually coated. The optional forms of shrimp are:

(a) Fantail or butterfly: prepared by splitting the shrimp; the shrimp are peeled, except that tail fins remain attached and the shell segment immediately adjacent to the tail fins may be left attached.

(b) Butterfly, tail off: prepared by splitting the shrimp, tail fins and all shell segments are removed.

(c) Round: round shrimp, not split; the shrimp are peeled, except that tail fins remain attached and the shell segment immediately adjacent to the tail fins may be left attached.

(d) Round, tail off: round shrimp, not split; tail fins and all shell segments are removed.

(e) Pieces: Each unit consists of a piece or a part of a shrimp, tail fins and all shell segments are removed.

(f) Composite units: each unit consists of two (2) or more whole shrimp or pieces of shrimp, or both, formed and pressed into composite units prior to coating; tail fins and all shell segments are removed; large composite units, prior to coating, may be cut into smaller units.

(4) The batter and breading ingredients referred to in subsection (1) of this section are the fluid constituents and the solid constituents of the coating around the shrimp. These ingredients consist of suitable substances which are not food additives. Batter and breading ingredients that perform a useful function are regarded as suitable, except that artificial flavorings, artificial sweeteners, artificial colors, and chemical preservatives, other than those provided for in this subsection are not suitable ingredients of frozen raw breaded shrimp. Chemical preservatives that are suitable are:

(a) Ascorbic acid, which may be used in a quantity sufficient to retard development of dark spots on the shrimp; and

(b) Antioxidant preservatives that may be used to retard development of rancidity of the fat content of the food.

(5) The label shall name the food, as prepared from each of the optional forms of shrimp specified in subsection (3)(a) through (f) of this section, and follow the numbered sequence of this subsection as follows:

(a) "Breaded fantail shrimp." The word "butterfly" may be used in lieu of "fantail" in the name.

(b) "Breaded butterfly shrimp, tail off."

(c) "Breaded round shrimp."

(d) "Breaded round shrimp, tail off."

(e) "Breaded shrimp pieces."

(f) Composite units:

1. If the composite units are in a shape similar to that of breaded fish sticks the name shall be "breaded shrimp sticks;" if they are in the shape of meat cutlets, the name shall be "breaded shrimp cutlets."

2. If prepared in a shape other than that of sticks or cutlets, the name shall be "Breaded shrimp _____" the blank to be filled in with the word or phrase that accurately describes the shape, and is not misleading.

3. In the case of the names specified in paragraphs (a) through (e) of this subsection, the words in each name may be arranged in any order, provided they are so arranged as to be accurately descriptive of the food.

4. The word "prawns" may be added in parentheses immediately after the word "shrimp" in the name of the food if the shrimp are of large size; for example, "fantail breaded shrimp (prawns)."

5. If the shrimp are from a single geographic area, the adjectival designation of that area may appear as part of the name; for example, "breaded Alaskan shrimp sticks."

(6) The names of the optional ingredients used, as provided for in subsection (4) of this section, shall be listed on the principal display panel or panels of the label with prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase.

(a) If a spice that also imparts color is used, it shall be designated as "spice and coloring," unless the spice is designated by its specific name.

(b) If ascorbic acid is used to retard development of dark spots on the shrimp, it shall be designated "Ascorbic acid added as a preservative" or "Ascorbic acid added to retard discoloration of shrimp."

(c) If any other antioxidant preservative, as provided in subsection (4) of this section, is used, the preservative shall be designated by its common name followed by the statement "added as a preservative."

(7) The method for determining percentage of shrimp material for those forms specified in subsection (3)(a) through (e) of this section shall be as follows:

(a) Equipment needed.

1. Two (2) gallon container, approximately nine (9) inches in diameter.

2. Two (2) vaned wooden paddle, each vane measuring approximately one and three-fourths (1 3/4) inches by three and three-fourths (3 3/4) inches.

3. Stirring device capable of rotating the wooden paddle at 120 rpm.

4. Balance accurate to 0.01 ounce (or one-tenth (0.1) gram).

5. U.S. Standard sieve No. 20, twelve (12) inch diameter.

6. U.S. Standard sieve, one-half (1/2) inch sieve opening, twelve (12) inch diameter. The sieves shall comply with the specifications as provided in Section 8(2) of this administrative regulation.

7. Forceps, blunt points.

8. Shallow baking pans.

9. Rubber-tipped glass stirring rod.

(b) Procedure.

1. Weigh the sample to be debreaded.

2. Fill the container three-fourths (3/4) full of water at seventy (70) to eighty (80) degrees Fahrenheit.

3. Suspend the paddle in the container, leaving a clearance of at least five (5) inches below the paddle vanes, and adjust speed to 120 rpm Add shrimp and stir for ten (10) minutes.

4. Stack the sieves, the one-half (1/2) inch mesh over the No. 20, and pour the contents of the container onto them.

5. Set the sieves under a faucet, preferably with spray attached, and rinse shrimp with no rubbing of flesh, being careful to keep all

rinsings over the sieves and not having the stream of water hit the shrimp on the sieve directly.

6. Lay the shrimp out singly on the sieve as rinsed. Inspect each shrimp and use the rubber-tipped rod and spray to remove the breading material that may remain on any of them, being careful to avoid undue pressure or rubbing, and return each shrimp to the sieve.

7. Remove the top sieve and drain on a slope for two (2) minutes, then remove the shrimp to weighing pan.

8. Rinse contents of the No. 20 sieve onto a flat pan and collect any particles other than breading (i.e., flesh and tail fins) and add to shrimp on balance pan and weigh.

9. Calculate percent shrimp material: percent shrimp material equals weight of debreaded sample divided by weight of sample, times 100, plus two (2).

(8) The method for determining percentage of shrimp material for composite units, specified in subsection (3)(f) of this section, is as follows:

(a) Equipment needed.

1. Water bath (for example a three (3) liter to four (4) liter beaker.)
2. Balance accurate to one-tenth (0.1) gram.
3. Clip tongs of wire, plastic, or glass.
4. Stopwatch or regular watch readable to a second.
5. Paper towels.
6. Spatula four (4) inch blade with rounded tip.
7. Nut picker.
8. Thermometer (immersion type) accurate to plus or minus two (2) degrees Fahrenheit.
9. Copper sulfate crystals ($CuSO_4$ $5H_2O$).

(b) Procedure.

1. Weigh all composite units in the sample while they are still hard frozen.

2. Place each composite unit individually in a water bath that is maintained at sixty-three (63) to eighty-six (86) degrees Fahrenheit and allow to remain until the breading becomes soft and can easily be removed from the still frozen shrimp material (between ten (10) seconds to eighty (80) seconds for composite units held in storage at zero degrees Fahrenheit). If the composite units were prepared using batters that are difficult to remove after one (1) dipping, redip them for up to five (5) seconds after the initial debreading and remove residual batter materials.

3. Remove the unit from the bath; blot lightly with double thickness of paper toweling; and scrape off or pick out coating from the shrimp material with the spatula or nut picker.

4. Weigh all the "debreaded" shrimp material.

5. Calculate the percentage of shrimp material in the sample, using the following formula: percent shrimp materials equals weight of debreaded shrimp sample divided by weight of sample, times 100.

Section 21. Frozen raw lightly breaded shrimp complies with the provisions of Section 20 of this administrative regulation except that it contains not less than sixty-five (65) percent of shrimp material, as determined by the method prescribed in Section 20 of this administrative regulation, as appropriate, and that in the name prescribed the word "lightly" immediately precedes the words "breaded shrimp."

Section 22. Enforcement Procedures. (1) The shellfish repacking plant permit shall be suspended immediately upon notice to the holder without a hearing if the local health department has reason to believe that an imminent health hazard exists. In this event, the permit holder may request a hearing. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~If requested a hearing shall be granted within seven (7) days of receipt of request.~~]

(2) In all other instances of violation of the provisions of this administrative regulation the local health department shall serve the holder of the shellfish repacking plant permit a written notice specifying the violations and afford the license holder a reasonable opportunity to correct same.

(3) If a shellfish repacking permit holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the permit.

(4) The holder of the shellfish repacking plant permit shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of notice unless a request for a hearing is filed in accordance with 902 KAR 1:400. [~~made to the local health department within the ten (10) day period.~~]

(5) Any person whose repacking permit has been suspended may make a request in writing for reinstatement of the permit.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: There are no shellfish repackers presently operating in Kentucky.

(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: None 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: None 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 increase.
2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.
2. Continuing cost or savings: No change.
3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from permits to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied, as the permit fee is determined by the total area of the establishment.

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 program is carried out by local health departments designated to administer the Food Manufacturing Programs and two inspectors in the Central Office.

3. State the aspect or service of local government to which this administrative regulation relates. Northern Kentucky District Health Department; Johnson County Health Department; Cumberland Valley District Health Department; Pennyrile District Health Department.

4. How does this administrative regulation affect the local government or any service it provides? The above local health departments conduct surveillance and enforcement activities of this program area.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

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 Environmental Health and Community Safety
(Amendment)

902 KAR 45:040. Carbonated beverages.

RELATES TO: KRS Chapter 217

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 217.125, EO 95-79

NECESSITY AND FUNCTION: KRS Chapter 217 authorizes the Cabinet for Health Services [~~Human Resources~~] to protect the public against the misbranding and adulteration of foods. The purpose of this administrative regulation is to establish uniform standards and definitions of identity for carbonated beverages (soda water) and uniform sanitary standards for carbonated beverage plants. Executive Order 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.

Section 1. Definitions. (1) "Carbonated beverage plant" means the premises, buildings, and installed equipment where carbonated beverages or syrups are manufactured, bottled, canned, packaged, packed, stored or handled and processed for sale to the public. It does not include facilities used solely for finished product storage, distribution, or for establishments that prepare beverages for sale to the consumer on the immediate premises.

(2) "Soda water" means the class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of sixty (60) degrees Fahrenheit. It may contain buffering agents as provided in Section 2(1)(e) of this administrative regulation. It either contains no alcohol or only alcohol (not in excess of five-tenths (0.5) percent by weight of the finished beverage) as is contributed by the flavoring ingredient used. Soda water designated by a name, including the proprietary name "cola" or a designation as a "pepper" beverage made with kola nut extract and other natural caffeine-containing extracts shall contain caffeine in a quantity not to exceed 0.02 percent by weight.

Section 2. Optional Ingredients. (1) Soda water may contain optional ingredients, if the optional ingredient is a food additive or a color additive within the meaning of KRS 217.145(1) and (3). The optional ingredients that may be used in soda water if the proportions reasonably required to accomplish their intended effects are:

(a) Nutritive sweeteners, consisting of the dry or liquid form of sugar, invert sugar, dextrose, fructose, corn syrup, glucose syrup sorbitol, or any combination of two (2) or more of these.

(b) One (1) or more of the following flavoring ingredients may be added, in a carrier consisting of ethyl alcohol, glycerin, propylene glycol, or edible vegetable oils:

1. Fruit juices (including concentrated fruit juices), natural flavoring derived from fruits, vegetables, bark, buds, roots, leaves, and similar plant materials.

2. Artificial flavorings.

(c) Natural and artificial color additives.

(d) One (1) or more of the acidifying agents acetic acid, adipic acid, citric acid, fumaric acid, gluconic acid, lactic acid, malic acid, phosphoric acid, or tartaric acid.

(e) One (1) or more of the buffering agents consisting of the acetate, bicarbonate, carbonate, chloride, citrate, gluconate, lactate, orthophosphate, or sulfate salts of calcium, magnesium, potassium, or sodium.

(f) One (1) or more of the emulsifying, stabilizing, or viscosity-producing agents brominated vegetable oils, carob bean gum (locust bean gum), glycerol ester of wood rosin, guar gum, gum acacia, gum tragacanth, hydroxylated lecithin, lecithin, methlcellulose, mono- and diglycerides of fat-forming fatty acids, pectin, polyglycerol esters of fatty acids, propylene glycol alignate, sodium alignate, sodium carboxymethylcellulose, sodium metaphosphate (sodium hexameta-phosphate).

(g) One (1) or more edible vegetable oils as optional ingredients in cloud producing agents.

(h) If one (1) or more of the optional ingredients in paragraphs (b) and (g) of this subsection are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of five-tenths (0.5) percent by weight of ingredients.

(i) One (1) or more of the foaming agents ammoniated glycyrrhizin, gum ghatti, licorice or glycyrrhiza, yucca (Joshua tree), yucca (Mohave), quillaia (soap-bark) (Quillaja saponaria Mol.), and enzyme-modified soy protein in a carrier of propylene glycol.

(j) Caffeine, in an amount not to exceed 0.02 percent by weight of the finished beverage.

(k) Quinine in an amount not to exceed eighty-three (83) parts per million by weight of the finished beverage.

(l) One (1) or more of the chemical preservatives ascorbic acid, benzoic acid, BHA, BHT, calcium disodium EDTA, erythorbic acid, glucose-oxidase-catalase enzyme, methylparaben or propylparaben, propyl gallate, potassium or sodium benzoate, potassium or sodium bisulfite, potassium or sodium metabisulfite, potassium or sodium sorbate, sorbic acid, sulfur dioxide or tocopherols; and in the case of canned soda water, stannous chloride in a quantity not to exceed a minimum level, as served, of 0.0015 percent or less calculated as tin (Sn), with or without one (1) or more of the other chemical preservatives listed in this subsection.

(m) The defoaming agent dimethylopolysiloxane in an amount not to exceed ten (10) parts per million.

(2) The name of the beverage for which a definition and standard of identity is established by this section is soda water, club soda, or plain soda.

(a) The name of each beverage containing flavoring and sweetening ingredients as provided for in this section shall be "_____ soda" or "_____ soda water" or "_____ carbonated beverage", the blank being filled in with the word or words that designate the characterizing flavor of the soda water; for example, "grape soda."

(b) If the soda water is one generally designated by a particular common name; for example, ginger ale, root beer, or sparkling water, that name may be used in lieu of the name prescribed in paragraph (a) of this subsection.

(3) Soda water that contains the optional ingredient caffeine as provided for in subsection (1)(j) of this section, artificial flavoring, artificial coloring, or any combination of these shall be labeled to show that fact by the label statement "with _____" or "_____ added," the blank being filled in with the word or words "caffeine," "artificial flavoring," "artificial coloring," or a combination of these words. If the soda water contains one (1) or more of the optional ingredients set forth in subsection (1)(l) of this section, which has or is intended to have a preservative effect in the finished beverage, it shall be labeled to show that fact by one of the following statements: "_____ added as a preservative" or "preserved with _____," the blank being filled in with the common name of the preservative ingredient. If soda water contains quinine salts, the label shall bear a prominent declaration either by use of the word "quinine" in the name of the article or by separate declaration.

(4) The label statements prescribed in subsection (3) of this section for declaring the optional ingredients present shall appear on a labeling surface of the beverage in a manner as to render the statement likely to be read by the ordinary individual under customary conditions of purchase or use. These statements shall immediately and conspicuously precede or follow the name of the beverage, if the name is prominently displayed, without intervening, written, printed, or graphic matter; provided, that, where the name is part of a trademark or brand, then other written, printed or graphic matter that is also a part of a trademark or brand may intervene if the label statements required by this section are placed to be conspicuously related to the name of the beverage.

Section 3. Carbonated Beverage Plant Permit. (1) No person, firm or corporation shall operate a carbonated beverage plant in Kentucky without first having obtained a permit from the cabinet.

(2) Any carbonated beverage plant in compliance with this administrative regulation shall be eligible for a permit upon application supported by inspection records acceptable to the cabinet. Any person desiring to operate a carbonated beverage plant shall make written application on form DFS-200 provided by the cabinet which is incorporated by reference and may be viewed or obtained at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m.

(3) Permits issued pursuant to this administrative regulation shall expire on December 31, following the date of issuance.

(4) Each permit issued pursuant to this administrative regulation shall be issued only for the premises and persons named in the application and shall not be transferable.

(5) Permits issued pursuant to this administrative regulation shall be posted in a conspicuous place at the carbonated beverage plant.

Section 4. Submission and Approval of Plans. No person shall construct or extensively alter any building intended for use as a carbonated beverage plant without having plans approved by the local health department having jurisdiction.

Section 5. Ingredient and Packaging Materials. (1) All ingredients used in the preparation of syrups and carbonated beverages shall comply with all applicable provisions of the Kentucky Food, Drug and Cosmetic Act KRS Chapter 217.

(2) Single service articles including bottles, cans, fiber cartons, crowns, caps or gaskets shall be provided in sanitary boxes, cartons, tubes, and protected and handled in a sanitary manner.

Section 6. Construction of Buildings. (1) A separate room of solid wall construction shall be provided for:

(a) Compounding and mixing syrups;

(b) Bottling and filling operations; and

(c) Bottle washing, receiving, storage and shipping; provided, however, that a variance to paragraph (b) of this subsection and this paragraph may be permitted by the cabinet when necessary for existing plants and for new plants where it is demonstrated to the satisfaction of the cabinet that separation is not necessary due to the design of the plant.

(2) The floors of rooms where ingredients are handled, compounded, mixed, or processed or where containers or equipment are washed shall be constructed of an impervious, smooth, easily cleaned material.

(a) Floors shall be kept in good repair and graded to drain properly to trapped drains.

(b) Walls and ceilings in the syrup room shall have a smooth, washable, light-colored surface, in good repair.

(c) Walls in container filling area shall have a smooth, washable and light-colored surface up to the height reached by splash or water spray. The wall area above this height and including ceiling may be constructed of suitable sound retarding material.

(d) Interior walls of storage areas may be left unfinished or covered with standard construction materials.

(e) Exterior, hinged doors shall be outward opening and self-closing.

(f) The food processing areas shall be separated from any living quarters or toilet room.

Section 7. Lighting. Lighting (natural, artificial, or a combination of both) equal to thirty (30) foot candles shall be provided in all working areas. Storage areas shall be provided with ten (10) foot candles of light. Inspection areas shall be provided with artificial light sources which furnish at least 100 foot candles on the inspection surface. Lights in processing areas where their breakage may cause contamination of product or ingredients shall be equipped with protective shields.

Section 8. Ventilation. Natural or artificial ventilation shall be sufficient to prevent excessive condensation formation, mold or objectionable odors and maintain sanitary conditions in the processing or storage areas or rooms.

Section 9. Water Supply. (1) The water supply shall be ample and potable, with adequate facilities for its distribution in the establishment

and its protection against contamination and pollution, and shall meet the requirements of the Natural Resources and Environmental Protection Cabinet pursuant to administrative regulations 401 KAR Chapter 8.

(2) Hot water for cleaning rooms and equipment shall be delivered under pressure to sufficient convenient outlets and shall be of a temperature as to accomplish a thorough clean up.

Section 10. Sewage, Waste Disposal and Plumbing. (1) All sewage and water carried wastes from a carbonated beverage plant shall be disposed of in a public sewerage system if available. If a public sewerage system is not available, all sewage and water carried wastes shall be disposed of in a private sewage disposal system, the construction and operation of which meets the requirements of 902 KAR 10:085.

(2) All wastes and accumulations of trash shall be disposed of in a manner approved by the Natural Resources and Environmental Protection Cabinet pursuant to KRS Chapter 224.

(3) All plumbing and plumbing fixtures shall be installed and operated pursuant to the state plumbing code KRS Chapter 318.

Section 11. Toilets, Dressing Rooms and Hand-washing Facilities. (1) Toilets, dressing rooms, and hand-washing facilities shall be conveniently located and shall be kept clean and in good repair. Doors to toilets shall be tight-fitting and self-closing.

(2) Hand-washing facilities shall be located in or convenient to the syrup room, toilet rooms and the bottling room. Hand-washing facilities shall provide hot and cold running water, suitable cleaning agents and single-service towels or other acceptable drying devices.

Section 12. Construction and Repair of Equipment. (1) All equipment, containers and utensils used in the handling, processing, compounding, mixing, storage, or transporting of beverages or beverage ingredients shall be smooth, impervious, corrosion resistant, nontoxic, and in good repair and shall be constructed to permit adequate sanitation.

(2) Effective protection from contamination shall be maintained.

(3) Product-contact surfaces shall be self-draining. Piping shall be of sanitary design and installation.

(4) All temperature-control equipment and control devices used on bottle washers shall be accurate and adequately maintained.

(5) If the washing, filling and crowning devices are not integral parts of one (1) machine, but are performed by separate units of equipment, they shall be arranged to exclude manual contact with the necks or tops of the bottles between filling and crowning.

(6) Mixing and storage tanks, pipelines, filters and other apparatus employed in the preparation and distribution of syrups shall be constructed of stainless steel or other suitable noncorrosive materials.

(7) All apparatus employed in syrup-making shall be free from recesses and so constructed that all parts may be easily cleaned and sanitized. All syrup tanks shall be self-draining and contents protected from contamination. Mixing shall be by mechanical means performed so as to prevent contamination of the syrup.

(8) Carbonated water shall not be conveyed in pipelines of galvanized iron, lead, zinc, copper, or other deleterious materials.

Section 13. Cleaning and Bactericidal Treatment. (1) Multiple-service containers, equipment and utensils used in handling, processing, storing or transporting of beverages or beverage ingredients shall be thoroughly cleaned after use. They shall be effectively sanitized prior to each usage.

(2) The cleaning and bactericidal treatment methods used shall not contaminate or adulterate soft drinks or their ingredients.

(3) Chemicals used for cleaning and bactericidal treatments shall have labels which identify the contents.

(4) All pipelines, apparatus, and containers used shall be thoroughly cleaned and sanitized at least once weekly.

(5) Apparatus and containers shall be washed and rinsed before sanitization.

(6) Fillers shall be cleaned and sanitized at the end of each day's operation and flushed with potable water before beginning operations.

(7) Since accepted industry practice permits syrup to remain in the syrup tanks and lines between period of processing operations, the syrup tanks and lines shall be cleaned and sanitized if emptied, as scheduled by the plant.

(8) After scheduled cleaning and sanitizing the syrup tanks and lines shall be flushed with potable water before beginning processing operations. Hot water, chlorine, or equally effective bactericidal agents are permissible for sanitization.

Section 14. Bottle Washing, Filling and Crowning and other Requirements. (1) The operations of receiving, segregating, holding, compounding, mixing, packaging, and packing, storing, transporting and handling shall be conducted in a sanitary manner. There shall be no contamination, adulteration, or deterioration of the product or its ingredients. Every plant manufacturing bottled beverages shall be equipped with suitable mechanical bottle washing apparatus, and with approved machines for carbonating, filling and crowning. Plant operations shall be performed to prevent the operator or his clothing from coming in contact with the beverages or sanitized product contact surfaces.

(2) Reusable glass containers used in the manufacture of carbonated beverages shall, before being refilled, be sanitized by being washed in an automatic washing machine. An indicating thermometer and caustic solution test equipment shall be used to ascertain the temperature and caustic strength of the washing solution. The caustic soak solution shall consist of at least three (3) percent caustic with a minimum contact period of five (5) minutes and a temperature of 130 degrees Fahrenheit or an equivalent cleansing and sanitizing process. The bottles shall then be rinsed free of washing solution with potable water. Single-service containers shall be cleaned by air or water rinsing machines.

(3) Syrups shall be prepared in a sanitary manner. Every precaution shall be taken against contamination by filth or deleterious substances during the preparation and subsequent storage. Galvanized iron, lead, zinc, copper, or brass-lined containers, pipelines, or apparatus of other deleterious materials shall not be used in preparation, storage or conveyance of syrups.

(4) Bottles shall be filled and capped by means of automatic machinery. The operator or his clothes shall not come in contact with any part of the bottle or machinery that might result in contamination of the product. Removal of the crown of imperfectly crowned bottles and recrowning shall not be permitted. Crowns which have been touched on the inner side by the operator, as may occur while adjusting the crowner, shall be discarded. Returnable bottles shall be visually inspected for any abnormal conditions immediately before being filled. Unclean and abnormal bottles shall not be filled. Mechanical inspection devices may be used, but not in lieu of visual inspection.

Section 15. Sanitary Controls. Every plant manufacturing bottled carbonated beverages shall be adequately provided with apparatus for ascertaining the sanitizing strength of the soaker solution used in bottle washing. An indicating thermometer shall be used at the bottle washing machine. If pipelines and other equipment are sanitized by hot water, additional thermometers shall be available at convenient locations. A suitable caustic test or some other suitable index for determining the causticity of the soaker solution shall be available at all times. Daily caustic tests and temperature checks shall be made by the plant operators. A record of these tests results shall be kept on file at the plant for six (6) months.

Section 16. Control of Insects and Rodents. The carbonated beverage plant shall be free of rodents, rodent harborages, insects,

and insect-breeding places.

Section 17. Storage Facilities. Storage facilities shall be clean, in good repair, and shall be provided with ample space for the storage of food substances, container closures, gaskets, cleaned utensils, and equipment, so as to prevent contamination and deterioration. Conveyors and cases shall be maintained in a clean condition.

Section 18. Premises. The premises shall be clean, well-drained, and free of environmental conditions and materials that constitute a nuisance or sanitation hazard.

Section 19. Vehicles and Transportation. Vehicles used to transport carbonated beverages shall be maintained in a clean condition and aid in protecting the product from contamination.

Section 20. Health and Cleanliness of Employees. (1) No employer shall permit any person who has a communicable disease or is a carrier of a communicable disease to work in a bottling and filling room or syrup room of a carbonated beverage plant. No person with open cuts, lesions or sores shall be allowed to work in a bottling and filling room or syrup room.

(2) Personnel shall wear clean outer clothing. In addition, syrup room personnel shall wear head coverings. All personnel in the food processing areas of the plants shall not smoke, chew tobacco, expectorate, or eat in the processing areas.

Section 21. Enforcement Procedures. (1) The carbonated beverage plant permit shall be suspended immediately upon notice to the holder without a hearing if the local health department has reason to believe that an imminent health hazard exists. In this event, the permit holder may request a hearing. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~If requested, a hearing shall be granted within seven (7) days of receipt of request.~~]

(2) In all other instances of violations of the provisions of this administrative regulation the local health department shall serve the holder of the carbonated beverage plant permit a written notice specifying the violations and afford the permit holder a reasonable opportunity to correct same.

(3) If a permit holder has failed to comply with any written notice issued under the provisions of this administrative regulation the local health department may suspend the permit.

(4) The holder of the carbonated beverage plant permit shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of notice unless a request for hearing is filed in accordance with 902 KAR 1:400. [~~made to the local health department within the ten (10) day period.~~]

(5) Any person whose permit has been suspended may make a request in writing for reinstatement of the permit.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: 30

(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: None 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: None 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 increase.
2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.
2. Continuing cost or savings: No change.
3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from permits to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied, as the permit fee is determined by the total area of the establishment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

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 program is carried out by local health departments designated to administer the Food Manufacturing Programs and two inspectors in the Central Office.

3. State the aspect or service of local government to which this administrative regulation relates. Northern Kentucky District Health Department; Johnson County Health Department; Cumberland Valley District Health Department; Pennyrile District Health Department.

4. How does this administrative regulation affect the local government or any service it provides? The above local health departments conduct surveillance and enforcement activities of this program area.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 45:080. Salvage.

RELATES TO: KRS 217.005 to 217.215, 217.992

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: The Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992 authorizes the Cabinet for Health Services [~~Human Resources~~] to regulate the misbranding and adulteration of foods and cosmetics. This administrative regulation establishes uniform requirements relating to the disposition of salvaged foods, cosmetics and related merchandise. Executive Order 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.

Section 1. Citation of Regulation. This administrative regulation may be cited as the "State Food and Cosmetic Salvage Regulation."

Section 2. Definitions. The following definitions shall apply in the interpretation and the enforcement of this administrative regulation:

(1) "Employee" means any person employed by a salvage processing plant or salvage distributor who does, or may in any manner handle or come in contact with the handling, storing, transporting, or selling of distressed, salvageable or salvaged food, cosmetics, or other items listed under subsection (9) of this section.

(2) "Distressed merchandise" means any food, cosmetic, or other item listed under subsection (9) of this section which has had the label lost or which has been subjected to possible damage due to accident, mishandling, fire, flood, adverse weather, or to any other similar cause; or which is suspected of having been rendered unsafe or unsuitable for human or animal consumption or use, or which is misbranded, short filled, over or inadequately processed, or below grade.

(3) "Nonsalvageable merchandise" means "distressed merchandise," as defined in subsection (3) of this section, which cannot be safely or practically reconditioned.

(4) "Perishable food" means that there exists a significant risk of spoilage or deterioration when a food has not been properly stored, or handled.

(5) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinum.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Foods in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(6) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with all cabinet requirements making it suitable for consumption or use as human or animal feed.

(7) "Salvageable merchandise" means any distressed food, cosmetic, or other item listed under subsection (9) of this section which can be reconditioned, labeled, relabeled, repackaged, recoopered, sorted, cleaned, culled or by any other means be salvaged to the satisfaction of the cabinet.

(8) "Salvaged merchandise" means previously distressed merchandise which has been reconditioned or salvaged pursuant to the provisions of this administrative regulation and is acceptable for such human or animal consumption or use as may be designated by the cabinet.

(9) "Sanitize" means adequate treatment of food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance and in substantially reducing numbers of other microorganisms. Such treatments shall not adversely affect the product and shall be safe to the consumer.

(10) "Vehicle" means any truck, car, bus, railcar, aircraft, boat, ship, or other means by which distressed, salvageable or salvaged merchandise is transported from one (1) location to another.

(11) "Salvage dealer" means any person who is engaged in selling or distributing salvaged merchandise.

(12) "Salvage processor" means any person who engages in the business of reconditioning salvageable or salvaged merchandise for sale or further distribution.

(13) "Supplier" means any person who transfers distressed merchandise to a salvage processor.

Section 3. Permit Requirements. (1) No person shall operate a salvage processing plant or act as a salvage dealer or distributor within the Commonwealth of Kentucky, who does not possess a permit issued by the cabinet. Only a person who complies with the requirements of this administrative regulation shall be entitled to receive and retain such a permit which will be of two (2) types:

(a) Salvage processing permit; and

(b) Salvage distributing permit. Permits shall not be transferable from one (1) person to another person or place. A permit shall be posted in every processing plant, and each distributor shall have a copy of a valid permit in each vehicle which he operates. The name and address of the salvage processing plant or distributor and the permit number must be conspicuously displayed on the outside of all vehicles being used for salvage operations. Each permit shall expire on December 31 next following its date of issuance.

(2) Issuance of permits. Any person desiring to operate a salvage processing plant or act as a salvage distributor shall make written application for a permit on Form DFS-200. This form is incorporated by reference and may be viewed or obtained at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. Upon receipt of such an application, the cabinet shall make an inspection of the salvage processing plant or distributor's operations to determine compliance with the provisions of this administrative regulation. When inspection reveals that the applicable requirements of this administrative regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. Notice to Cabinet of Distressed Merchandise. It shall be the duty of any person owning or having possession of any merchandise listed in Section 2(9) of this administrative regulation which becomes distressed merchandise to notify the cabinet if possible prior to such merchandise being removed from the premises at which it was located at the time it became distressed merchandise. If emergency removal of distressed merchandise is required, notice to the cabinet shall be made as soon thereafter as possible. It shall also be the duty of the owner or manager of the salvage processing plant to notify the cabinet within forty-eight (48) hours or, as soon as possible thereafter, whenever distressed merchandise subject to the provisions of this administrative regulation is obtained.

Section 5. Movement of Distressed Merchandise. Distressed merchandise shall be moved from the site of a fire, flood, sewer back-up, wreck or other cause as expeditiously as possible after compliance with Section 4 of this administrative regulation so as not to become putrid, unwholesome, rodent or insect harborages, or otherwise, a menace to public health. All distressed and salvageable merchandise of a perishable nature shall, prior to reconditioning, be transported only in vehicles provided with adequate refrigeration or freezing capabilities necessary for product maintenance. No interstate movement of known distressed or salvageable merchandise shall be made without the prior approval of the cabinet, the appropriate control agency in the state receiving the merchandise, and the Federal Food and Drug Administration.

Section 6. Handling of Distressed Merchandise. (1) If distressed articles unrelated to foods, cosmetics, etc. are also salvaged, they shall be handled in rooms separate from those in which foods are reconditioned.

(2) Sufficient precautions shall be taken to prevent cross-contamination (e.g., animal feed to human food) among the various types of merchandise which are salvageable or salvaged.

Section 7. Reconditioning and Labeling of Distressed Merchandise. (1) All salvageable distressed merchandise shall be reconditioned prior to sale or distribution except for such sale or distribution to a person holding a valid salvage processing permit issued by the cabinet.

(2) All metal cans of food offered for sale or distribution shall be free of any evidence of rust pitting, and essentially free of dents (especially at rim, end double seams and/or side seams). Any metal container for which buffing is required to remove pitted rust and leakers, springers, flippers, and swells shall be deemed unfit for sale or distribution. Containers, including metal and glass containers with press caps, screw caps, pull rings or other types of openings which have been in contact with water, liquid foam, or other deleterious substances, as a result of firefighting efforts, flood, sewer back-up, or similar mishaps, shall be deemed unfit for sale or distribution, i.e., nonsalvageable merchandise as defined in Section 2(4) of this administrative regulation, except that consideration may be given to reconditioning spirits by distillation where feasible.

(3) All metal containers of food, other than those mentioned in subsection (2) of this section, whose integrity has not been compromised and whose integrity would not be compromised by the reconditioning, and which have been partially or totally submerged in water, liquid foam, or other deleterious substance as the result of flood, sewer back-up, or other reasons shall, after thorough cleaning, be subjected to a sanitizing rinse of a concentration of 100 ppm available chlorine for a minimum period of one (1) minute, or shall be sanitized by another method approved by the cabinet, and subsequently be treated to inhibit rust formation. All other types of packages (including cans or tins which are opened by pull tabs) so damaged shall be deemed unsafe for use or sale.

(4) Label removal. Any cans showing surface rust shall, after having their labels removed, be inspected and destroyed if they contain pin holes. If salvageable, they shall then be cleaned by a method approved by the cabinet before relabeling. Any container of food with the label or mandatory information missing, that cannot be identified and relabeled correctly, shall not be sold. When original labels are missing or illegible , relabeling or overlabeling shall be required.

(5) Relabeling. All salvaged merchandise shall be labeled to indicate that the merchandise has been salvaged. All salvaged merchandise in containers is to be provided with labeling meeting the appropriate requirements of KRS 217.035 and 217.037. Where original labels are removed from containers which are to be resold or redistributed, the replacement labels must show as the distributor, the name and address of the salvage processing plant.

Section 8. Records of Distressed Merchandise. A written record or receipt of distressed, salvageable and salvaged merchandise shall be kept by the salvage processing plant and shall be kept open for inspection by the cabinet during business hours. The records shall include the name of the product, the name and address of the manufacturer or distributor, the production code, container sizes, source of the distressed merchandise, the date received, the type of damage, and the salvage process conducted. These records shall be kept on the premises of the salvage processing plant for a period of one (1) year following the completion of transactions involving a lot of merchandise.

Section 9. Protection from Contamination. (1) All salvageable and salvaged merchandise, while being stored or reconditioned at a salvage processing plant, or during transportation, shall be protected from contamination. All perishable foods as well as those susceptible to microbial contamination shall be stored at such temperatures as will protect against spoilage. All potentially hazardous foods shall be maintained at safe temperatures (forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above). Frozen foods shall be maintained at zero degrees Fahrenheit or below. Poisonous and toxic materials shall not be transported with distressed, salvageable or salvaged merchandise or stored in a salvage processing plant; unless effective separation is provided. However, such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitation purposes may be used or stored in salvage processing plants. Such poisonous and toxic materials shall be identified, and shall be used only in such manner and under such conditions as will not contaminate distressed, salvageable or salvaged merchandise, shall not constitute a hazard to employees and, when not in use, shall be stored in cabinets which are used for no other purpose.

(2) Segregation of merchandise. All salvageable merchandise shall be promptly sorted and segregated from nonsalvageable merchandise to prevent further contamination of the merchandise to be reconditioned for sale or distribution.

Section 10. Personnel Health and Disease Control. (1) No employee while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in an area

of a salvage processing plant or for a salvage distributor in any capacity in which there is a likelihood of such person contaminating salvageable or salvaged merchandise with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he or she shall notify the cabinet immediately.

(2) All employees shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to good hygienic practices while on duty. Employees shall wash their hands thoroughly in an approved hand-washing facility before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his or her hands. The consumption of food or beverages and the use of tobacco in any form shall be allowed only in designated areas and not in areas where food is exposed or in areas used for washing equipment and utensils.

Section 11. Salvage Processing Plant Equipment and Utensils. (1) All equipment and utensils used in a salvage processing plant shall be so designed and of such material and workmanship as to be smooth, easily cleanable and durable, and shall be in good repair; and the surfaces of such equipment and utensils coming in contact with food and other food contact surfaces shall, in addition, be easily accessible for cleaning, nontoxic, corrosion-resistant and nonabsorbent; provided, that, when approved by the cabinet, exceptions may be made to the above materials requirements.

(2) All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. Equipment which was installed prior to March 12, 1975 which does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition and surfaces coming in contact with salvageable or salvaged merchandise are nontoxic.

Section 12. Equipment and Utensil Cleaning and Sanitization. (1) Effective means of cleaning and sanitizing equipment, utensils, and soiled food containers, shall be provided. In new or extensively altered salvaged processing plants a three (3) compartment sink and/or a suitable automatic pressurized spray-type ware washing machine capable of washing and sanitizing with hot water or chemical sanitizers shall be provided and conveniently located within the processing area.

(2) Cleaning frequency. All utensils and food-contact surfaces in a salvage processing plant shall be thoroughly cleaned and sanitized prior to use. All other surfaces of equipment shall be cleaned at such intervals as necessary. After cleaning and until use, all equipment and utensils shall be stored and handled as to be protected from contamination.

Section 13. Salvage Processing Plant Sanitary Facilities and Controls. (1) Water supply. The water supply shall be adequate, of a safe, sanitary quality and from a source approved by the Natural Resources and Environmental Protection Cabinet. Hot and cold running water under pressure shall be provided in all areas where foods, or cosmetics are processed, or equipment, utensils, or containers are washed.

(2) Sewage. All sewage and other liquid waste shall be disposed of in a public sewerage system or, in the absence thereof, in a manner approved by the Natural Resources and Environmental Protection Cabinet or the cabinet.

(3) Plumbing. All plumbing shall comply with the State Plumbing Code.

(4) Toilet facilities. Each salvage processing plant shall be provided with adequate, conveniently located toilet facilities for its employees. In new establishments or establishments that are extensively altered, toilet facilities shall be provided in accordance with the requirements of the State Plumbing Code. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. The doors of all toilet rooms shall be self-closing. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials and such receptacles in toilet rooms shall be covered.

(5) Lavatories. Each salvage processing plant shall be provided with adequate, conveniently located hand-washing facilities for its employees, including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleansing soap or detergent, and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(6) Garbage and refuse. All refuse containing foods or cosmetics shall be kept in leak-proof, nonabsorbent containers be kept in leak-proof, nonabsorbent containers which shall be kept covered with tight-fitting lids when filled or stored, or not in continuous use; provided, that such containers need not be covered when stored in a special vermin-proofed room or enclosure, or in a waste refrigerator. All other refuse shall be stored in containers, rooms, or areas in an approved manner. Adequate cleaning facilities shall be provided, and each container, room or area shall be thoroughly cleaned after the emptying or removal of refuse. All refuse shall be disposed of with sufficient frequency and in such a manner as to prevent contamination of salvaged product and surrounding processing areas.

(7) Insect and rodent control. Effective measures shall be taken to protect against the entrance, breeding, and presence of rodents, insects, and other vermin in the salvage processing plant.

Section 14. Salvage Plant Construction and Maintenance. (1) Floors. The floor surfaces in all rooms and areas in which salvageable or salvaged merchandise is stored or processed and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms, and toilet rooms, should be constructed as to be easily cleanable. All floors shall be kept clean and in good repair. Floor drains shall be provided in all rooms where floors are subjected to flooding-type cleaning or where normal operations release or discharge water or other liquid waste onto the floor.

(2) Walls and ceilings. The walls and ceilings of all rooms shall be clean and in good repair.

(3) Lighting.

(a) At least thirty (30) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all areas in which salvageable or salvaged merchandise is processed or stored, where utensils are washed, and in hand-washing areas. Dressing or locker rooms, toilet rooms, and refuse storage areas should be adequately lighted. During all cleanup activities, adequate light shall be provided in all other areas to facilitate cleaning and good sanitation.

(b) Protective shielding.

1. Shielding to protect against broken glass falling onto unpackaged food shall be provided for all artificial lighting fixtures located over or within food-storage, food-preparation, and food-display areas.

2. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

(4) Ventilation. All rooms and processing areas in the salvage processing plant should be well ventilated. Ventilation hoods and devices when used shall be designed to prevent condensate from dripping into foods or cosmetics, or onto preparation surfaces. Filters, when used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable state and local fire-prevention requirements and shall, when vented to the outside air, discharge in such manner as not to create a nuisance.

(5) Locker area. Adequate facilities should be provided for the

orderly storage of employee's clothing and personal belongings.

(6) Housekeeping. All parts of the salvage processing plant and its premises shall be kept clean and free of litter and refuse. Cleaning operations shall be conducted in such a manner as to prevent contamination of salvageable and salvaged merchandise. None of the operations connected with a salvage processing plant shall be conducted in any room used as an employee lounge or living or sleeping quarters. Soiled coats and aprons should be kept in suitable containers until removed for laundering. No live birds or animals shall be allowed in any area used for the conduct of a salvage processing plant's operations or for the storage of salvageable and salvaged merchandise except that patrol dogs accompanying security or police officers are permitted. Guide dogs accompanying blind persons shall be permitted in sales areas.

(7) Vehicles. Vehicles used to transport distressed, salvageable, or salvaged merchandise should be maintained in a clean condition to protect the product from contamination.

Section 15. Plan Review of Future Construction. When a salvage processing plant is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a salvage processing plant, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, and construction materials of work areas and the location, size and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 16. Inspections; Notices. (1) Inspection. At least once every twelve (12) months, the cabinet shall inspect each salvage processing plant and distributor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. Whenever the cabinet makes an inspection of a salvage processing plant or distributor, its representative shall record the findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection report form to the permit holder or his representative in charge.

(3) Issuance of notices. Whenever the cabinet makes an inspection of a salvage processing plant or distributor and determines that any of the requirements of this administrative regulation have been violated, the cabinet shall notify the permit holder or person in charge of such violations by means of an inspection report form or other written notice. In such notification, the cabinet shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of the violations found.

(c) State that failure to comply with any notice issued in accordance with the provisions of this administrative regulation may result in suspension of the permit.

(d) State that an opportunity for appeal from any notice of inspection findings will be provided if a written request for a hearing is filed with the cabinet within the period of time established in the notice for correction.

(4) Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the cabinet.

Section 17. Salvage Processing Plants and Distributors Outside Jurisdiction of the Cabinet. Salvaged merchandise from salvage processing plants and distributors located outside the jurisdiction of the Commonwealth of Kentucky may be sold within the state, if such plants and distributors conform to the provisions of this administrative regulation or to substantially equivalent provisions and have a valid permit from the cabinet. To determine the extent of compliance with such provisions, the cabinet may accept reports from responsible authorities in other jurisdictions where such plants and distributors are located.

Section 18. Suspension and Revocation of Permits. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the cabinet in the performance of its duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing [~~which shall be granted as soon as practicable~~].

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400. [~~with the cabinet by the permit holder within such ten (10) day period.~~]

(3) Reinstatement of suspended permits. Any person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing the suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this administrative regulation, the permit shall be reinstated.

(4) Revocation of permits. For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet, by the permit holder, within such ten (10) day period.~~] A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The hearings provided for in this section shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.~~]

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regula-

tion. Send written notification of intent to attend the public hearing or written comments to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: 45

(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: None 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: None 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 increase.

2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.

2. Continuing cost or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from permits to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied, as the permit fee is determined by the total area of the establishment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

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 program is carried out by local health departments designated to administer the Food Manufacturing Programs and two inspectors in the Central Office.

3. State the aspect or service of local government to which this administrative regulation relates. Northern Kentucky District Health Department; Johnson County Health Department; Cumberland Valley District Health Department; Pennyrile District Health Department.

4. How does this administrative regulation affect the local government or any service it provides? The above local health departments conduct surveillance and enforcement activities of this program area.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 45:100. Vending machines; food and beverages.

RELATES TO: KRS 217.808 to 217.812, 217.990(8)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services [~~Human Resources~~] is empowered by KRS 217.808 et. seq. to regulate food vending machines. This administrative regulation relates to the sanitation and inspection of food vending machines, food vending commissaries and the issuance and suspension of permits. The purpose of this administrative regulation is to establish uniform requirements for the regulation of food vending machines and food vending commissaries in Kentucky. Executive Order 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.

Section 1. Citation of Regulation. This administrative regulation may be cited as the "State Food and Beverage Vending Machine Code."

Section 2. Sale of Adulterated or Misbranded Food Prohibited. (1) No person shall sell, offer or expose for sale, through vending machines, or have in his possession with intent to sell therefrom, any food which is adulterated or misbranded as set forth in KRS 217.025 and 217.035 of the Kentucky Food, Drug and Cosmetic Act.

(2) Samples of food may be taken and examined by the cabinet as often as may be necessary to determine freedom from adulteration or misbranding.

Section 3. Sanitation Requirements for Vending Machine Operations. (1) Food supplies. At all times, including while being prepared, stored, loaded, displayed, or transported, food intended for sale through vending machines and condiments or other foods available at vending machine locations shall be wholesome, correctly labeled and processed under sanitary conditions acceptable to the

cabinet and shall be protected from contamination by all agents, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding, draining, and overhead leakage or condensation. All meat and meat products and poultry and poultry products shall have been inspected and passed for wholesomeness by an official governmental agency. All hermetically sealed foods offered for sale shall have been processed in approved food processing establishments. Home prepared food shall not be used or offered for sale through vending machines.

Special requirements.

(a) Milk and fluid milk products offered for sale through vending machines shall be pasteurized, shall meet the Grade A quality standards as established by law, and shall be dispensed only in individual original containers.

(b) Milk and fluid milk products and fluid nondairy products (creaming agents) shall not be dispensed in vending machines as additional ingredients in hot liquid beverages or other foods.

(c) Fresh fruits which may be eaten without peeling shall be thoroughly washed in potable water at the packing plant by the processor, or at the commissary before being placed in the vending machines for dispensing. The washed fruit shall be protected from contamination after the washing process.

(d) All food, other than fresh fruit, shall be stored or packaged in clean protective containers, and all food shall be handled and vended in a sanitary manner.

(e) Potentially hazardous food offered for sale through vending machines shall be dispensed to the consumer in the individual, original container or package into which it was placed at the commissary or at the manufacturer's or processor's plant. Potentially hazardous food shall not be dispensed from bulk food machines.

(f) Potentially hazardous food shall be maintained at safe temperatures except as follows:

1. During necessary periods of preparation and packaging; and

2. During the actual time required to load or otherwise service the machine and for a maximum machine ambient temperature recovery period of thirty (30) minutes following completion of loading or servicing operation.

(2) Consumer containers. All food-contact surfaces of containers shall be protected from contamination. If condiments or other foods are provided for service in conjunction with food dispensed by a vending machine, they shall be packaged in individual portions in single-service containers or shall be dispensed from approved sanitary dispensers which are washed, sanitized and filled at the commissary, or be commercially prepared in nonreusable containers. Relish bowls and similar condiment containers shall not be used at unattended locations. Drinking straws, stirrers, toothpicks, spoons, knives, forks, and similar articles which are provided in conjunction with food dispensed by a vending machine shall be individually wrapped or dispensed from bulk containers in a sanitary manner.

(3) Equipment maintenance and operations.

(a) Vending machines dispensing potentially hazardous food shall be provided with adequate refrigerating or heating units, or both, and thermostatic controls which insure the maintenance of applicable temperatures at all times. Such vending machines shall also have controls which prevent the machine from vending potentially hazardous food until serviced by the company, in the event of power failure or other conditions, resulting in noncompliance with temperature requirements in the food storage compartment. Hot food vending machines designed to heat foods through the potentially hazardous range of forty-five (45) degrees Fahrenheit to 140 degrees Fahrenheit, shall also be equipped with automatic controls which prevent the machine from vending such food if heating through this temperature range is not accomplished in 120 minutes or less. Provided, however, equipment which was installed prior to March 12, 1975 that does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are nontoxic.

(b) Potentially hazardous food that has failed to conform to the time-temperature requirements of this administrative regulation, shall be removed from the vending machine, and be denatured or otherwise rendered unusable for human consumption.

(c) Vending machines dispensing potentially hazardous food shall be provided with one (1) or more thermometers which, to an accuracy of plus or minus three (3) degrees Fahrenheit, indicate the air temperature of the warmest part of the refrigerated food storage compartment, or the coldest part of the heated food storage compartment, whichever is applicable.

(4) Inspection of vending machine commissaries. All commissaries providing food for vending machines covered by this administrative regulation shall comply with the applicable provisions of the current "State Food Service Code."

(5) Machine location.

(a) Vending machines, ovens and other equipment shall be located in a room, area or space which can be maintained in a clean condition and which is protected from overhead leakage or condensation from water, waste, or sewer piping. The immediate area in which the equipment is located shall be well lighted and ventilated. Each vending machine shall be located so that the space around and under the machine can be easily cleaned and maintained, and so that insect and rodent harborage is not created.

(b) The floor area where vending machines are located shall be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition.

(c) Adequate hand-washing facilities, including hot and cold or tempered running water, soap and individual towels, shall be convenient to the machine location and shall be available for use by employees servicing or loading bulk food machines.

(6) Single-service articles. Single-service articles shall be purchased in sanitary packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be furnished to the customer in the original individual wrapper or from a sanitary single-service dispenser. All single-service articles shall be protected from manual contact, dust, insects, rodents, and other contamination.

(7) Other equipment.

(a) All other equipment at the vending location must be kept clean. Food-contact surfaces, if any, must be cleaned, rinsed and sanitized at a frequency established by the cabinet based upon the type of product being dispensed.

(b) The cavities and door edges of microwave ovens shall be kept free of encrusted grease deposits and other accumulated soils and shall be cleaned daily, or as often as is necessary to achieve the safe, sanitary operation thereof. All doors, seals, hinges, and latch fasteners (screws and related hardware) shall be kept tight and adjusted in accordance with manufacturer's procedures. Microwave ovens shall be in compliance with applicable safety standards of the United States Food and Drug Administration's Center for Devices and Radiological Health.

(c) Food-contact surfaces of all equipment and utensils must be protected from contamination at all times including while being transported from the commissary to the vending location.

(8) Exterior construction and maintenance.

(a) The vending machine shall be of sturdy construction and the exterior shall be designed, fabricated, finished, and maintained to facilitate its being kept clean and to minimize the entrance of insects and rodents. The exterior of the machine shall be kept clean.

(b) Door and panel access openings to the food and container storage spaces of the machine shall be tight fitting, and if necessary, gasketed to prevent the entrance of dust, moisture, insects, and rodents.

(c) All ventilation louvers or openings into vending machines shall

be effectively screened. Screening material for openings into food and container storage spaces of the machine shall be not less than sixteen (16) mesh to the inch or equivalent. Screening material for openings into condenser units which are separated from food and container storage spaces shall be not less than eight (8) mesh to the inch or equivalent.

(d) In all vending machines in which the condenser unit is an integral part of the machine, such unit when located below the food and container storage space, shall be separated from such space by a dust proof barrier, and when located above, shall be sealed from such space.

(e) In order to prevent seepage underneath the machine and to promote cleaning, free standing vending machines shall have one (1) or more of these elevation or movability features:

1. Be light enough to be manually moved with ease by one (1) person; or

2. Be elevated on legs or extended side walls to afford, with or without kick plates, and unobstructed vertical space of at least six (6) inches under the machine; or

3. Mounted on rollers or casters which permit easy movement; or

4. Be sealed to the floor.

Where used, kick plates shall be easily removable or be capable of being rotated. These kick plates shall be designed and installed to make the area under the machine easily accessible for routine cleaning without unlocking the cabinet door.

(f) Counter type machines shall be:

1. Sealed to the counter; or

2. Mounted on four (4) inch legs or the equivalent; or

3. Easily moved for cleaning with service connections in place.

(g) All service connections through an exterior wall of the machine including water, gas, electrical, and refrigeration connections, shall be grommeted, or closed with no opening over 1/32 inch to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food shall be such as to discourage unauthorized or unintentional disconnection.

(9) Interior construction and maintenance.

(a) The nonfood-contact surfaces of the interior of vending machines shall be designed and constructed to permit easy cleaning and to facilitate maintenance operations and shall be kept clean and in good repair. Inaccessible surfaces and areas shall be minimized.

(b) All food-contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks, and chipped places. The design of such surfaces shall preclude routine contact between food and "V" type threaded surfaces except that in equipment where such contact is unavoidable, such as ice makers, such threads shall be minimized. All joints and welds in food-contact surfaces shall be smooth, and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.

(c) If solder or other sealer is used on food-contact surfaces, it shall be composed of safe materials and be corrosion resistant.

(d) All food-contact surfaces of vending machines, including containers, pipes, valves, and fittings, shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion-resistant, nonabsorbent, easily cleanable and durable under conditions of normal use and shall be cleaned, rinsed, and sanitized at a frequency established by the cabinet based upon the type of product being dispensed.

(e) All food-contact surfaces, unless designed for in-place cleaning, shall be accessible for manual cleaning, rinsing, sanitizing, and inspection:

1. Without being disassembled; or

2. By disassembly without the use of tools; or

3. By easy disassembling with the use of only simple tools such as a screwdriver or an open-end wrench.

(f) All food-contact parts or surfaces not designed for in-place cleaning (paragraph (g) of this subsection) shall be cleaned, rinsed and sanitized in clean portable containers or in utensil washing sinks at the location or at the commissary. Cleaning shall consist of washing in warm water containing a suitable detergent and brushing or wiping, as appropriate. Rinsing shall consist of immersion or wiping with clean clear rinse water. Sanitizing shall be accomplished by:

1. Immersion or rinsing in water of at least 170 degrees Fahrenheit for thirty (30) seconds; or

2. Immersion for one (1) minute in a chemical sanitizing solution containing at least fifty (50) parts per million (p.p.m.) of available chlorine, or twelve and five-tenths (12.5) p.p.m. of available iodine, or 200 p.p.m. of quaternary ammonium sanitizer.

3. When chemicals are used for sanitization, a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(g) In machines designed so that food-contact surfaces are not readily removable, all such surfaces intended for in-place cleaning shall be designed and fabricated that:

1. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

2. Cleaning and sanitizing solutions will contact all food-contact surfaces; and

3. The system is self-draining or capable of being completely evacuated; and

4. The procedures utilized result in thorough cleaning of the equipment.

(h) The openings into all nonpressurized containers used for the storage of vendible food, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers are prohibited. Any port opening through the cover shall be flanged upward at least three-sixteenths (3/16) of an inch, and shall be provided with an overlapping cover flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the food container unless a watertight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of safe materials, relatively stable, and relatively nonabsorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.

(i) The delivery tube or chute and orifice of all bulk food vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall divert condensation or moisture from the normal filling position of the container receiving the food. The vending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is kept closed except when food is being removed. The cup filling area or platform of controlled location vending machines shall not require a door or cover if there is no opening in the cabinet interior at the point other than for dispensing tube(s) or trapped waste tubing.

(j) The food storage compartment and other compartments in refrigerated vending machines which are subject to condensation or cooling water retention shall be self-draining or equipped with a drain outlet which permits complete draining. In vending machines designed to store cartoned beverages, diversion devices, and retention pans or drains for leakage shall be provided. All such drains, devices, and retention pans shall be easily cleanable.

(k) Can and bottle openers which come into contact with the food or the food-contact surfaces of the containers shall be constructed of corrosion-resistant, nonabsorbent, and safe materials and shall be kept clean. Cutting or piercing parts of multiuse openers which come into contact with the food or food-contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents, and other contamination; and such parts shall be readily removable for cleaning.

(1) Lighting fixtures located in vending machines shall be

shielded, coated or otherwise shatter resistant, except that this requirement shall not apply to vending machines which dispense only prepackaged foods.

(10) Water supply.

(a) All water used in vending machines shall be of a safe and sanitary quality and from a source constructed and operated in accordance with applicable standards of the Natural Resources and Environmental Protection Cabinet. Water used as a food ingredient shall be piped to the vending machine under pressure.

(b) All plumbing connections and fittings shall be installed and maintained in accordance with the State Plumbing Code.

(c) If used, water filters or other water conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.

(d) To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, postmix soft drink vending machines manufactured after January 1, 1975, which are designed with an incoming water supply air gap shall have no copper tubing or other potentially toxic water system tubing between the air gap and the downstream, carbonated water dispensing nozzle.

(e) To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, postmix soft drink vending machines which are directly connected to the external water supply system shall be equipped with a double (or two (2) single) spring-loaded check valves or other devices which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. Backflow preventive devices shall be located to facilitate servicing and maintenance. No copper tubing or other potentially toxic tubing or contact surfaces shall be permitted in or downstream from the check valves or backflow devices. These check valves or devices should be inspected and cleaned or replaced annually.

(f) Where spring-loaded check valves are used to prevent the backflow of carbon dioxide into accessible upstream copper or other potentially toxic piping or tubing, a screen of not less than 100 mesh to the inch shall be installed in the water line immediately upstream from the check valves in a location which permits servicing or replacement.

(g) In all vending machines in which carbon dioxide is used as a propellant, all food-contact surfaces from the check valves or other protective devices, including the valves or devices, shall be of such material as to preclude the production of toxic substances which might result from interaction with carbon dioxide or carbonated water.

(11) Waste disposal.

(a) All trash and other solid or liquid waste shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness, and shall be disposed of in accordance with applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet.

(b) Self-closing, leak-proof, easily cleanable, insect-proof, and rodent-proof waste receptacles shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures, and other items.

(c) Plastic bags and wet-strength paper bags may be used to line the receptacles. Soiled waste receptacles shall be cleaned at a frequency to prevent insect and rodent attraction.

(d) Waste receptacles shall not be located within the vending machines with the exception of those machines dispensing only packaged food with crown closures; in which case, the closure receptacles may be located within the machine. Waste receptacles shall not be located under counters or otherwise enclosed in a manner that will create a nuisance or prevent space around and under the counter or enclosure from being easily cleaned and maintained. Suitable racks and cases shall be provided for multiuse containers or bottles.

(e) Containers shall be provided within all machines dispensing liquid food in bulk for the collection of drip, spillage, overflow, or other internal wastes. Such machines shall be equipped with an automatic shutoff device at the waste pail or other devices or valves which will place the machine out of operation before the waste pail overflows. Such devices shall prevent water or liquid product from continuously running in the event of the failure of any single control, high level control, or other flow control device in the liquid product or water system.

(f) Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable, and shall be corrosion-resistant. If liquid wastes from drip, spillage, or overflow, which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an air gap.

(12) Delivery of food, equipment, and supplies to machine locations. Food, food-contact surfaces of containers, equipment and supplies, shall be protected from contamination while in transit to machine location. Potentially hazardous food, while in transit and in storage on location, shall be maintained at safe temperatures.

(13) Personnel - cleanliness.

(a) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while engaged in direct handling of foods, or food-contact surfaces of utensils or equipment.

(b) Employees shall thoroughly wash their hands with soap and warm water immediately prior to engaging in any vending machine servicing operation which may bring them into contact with food, or with food-contact surfaces of utensils, containers, or equipment. While engaged in such service operations, employees shall wear clean outer garments, shall not use tobacco in any form and shall keep their fingernails clean and trimmed.

Section 4. Health and Disease Controls. No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, a cold, diarrhea, gastrointestinal upsets, or a respiratory infection, shall work in any area of a commissary or vending operation in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the vending machine or commissary operation has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the cabinet immediately.

Section 5. Procedure when Infection is Suspected. When the cabinet has reasonable cause to suspect the possibility of disease transmission from any employee, the cabinet shall secure a morbidity history of the suspected employee or make such other investigation as may be indicated, and take appropriate action. The cabinet may require any or all of the following:

(1) The immediate exclusion of the employee from all commissaries and vending machine operations.

(2) The immediate closure of the commissaries and operations concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists.

(3) Restriction of the employee's services to some area of work where there would be no danger of transmitting disease.

(4) Adequate medical examination of the employee and of his associates, with such laboratory examinations as may be indicated.

Section 6. Issuance of Permits. (1) No person shall operate a vending machine company within the Commonwealth of Kentucky who does not possess a valid permit issued to him by the cabinet as

provided by KRS 217.809. Only a person who complies with the requirements of this administrative regulation shall be entitled to receive and retain such a permit. Permits shall not be transferable from one company to another company or place. A valid permit shall be conspicuously posted in the headquarters office of every food vending company.

(2) Any person desiring to operate one (1) or more vending machines in the Commonwealth of Kentucky shall make application in writing on Form DFS-208. This form is incorporated by reference and may be viewed or obtained at the Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. Such applicant shall provide the following information:

(a) The applicant's full name, post office address, and whether such applicant is an individual, firm or corporation. If any partnership exists, the names of the partners, together with their addresses, shall be included.

(b) The location of the commissary or commissaries and of other establishments where vending machines are repaired or renovated.

(c) The identity and form of the products to be dispensed through vending machines and the number of each such type vending machine in the applicant's possession.

(d) The company shall maintain and make available to the cabinet upon request, a list of the number of all vending machines operated by the company and their specific locations within each county served and of all commissaries or other establishments from which the machines are serviced.

(e) Accompany each application for a permit to operate a vending machine company with the correct fee as provided by KRS 217.811.

(f) The application shall contain the signature of the applicant or applicants.

(3) Upon receipt of such application, the cabinet shall make an inspection of the vending machine company to determine compliance with the provisions of this administrative regulation. A numbered operator's permit shall be issued to the applicant by the cabinet after compliance by the operator with the applicable provisions of this administrative regulation.

(4) The company shall provide on each machine or on a wall placard placed at the location of the machine(s) the company's name, address and telephone number. This identification shall also contain the words "Cabinet for Human Resources Permit _____" or "CHR Permit _____." Such information shall be readily visible after placement on the machine or at the machine location.

(5) Whenever a machine is no longer in service, is sold or transferred to another vending machine company, the company holding the permit for that machine shall remove the identification for such machine.

Section 7. Suspension of Permits. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the cabinet's personnel in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing [~~which shall be granted as soon as practicable~~].

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400 [~~the cabinet by the permit holder within such ten (10) day period~~].

Section 8. Reinstatement of Suspended Permits. Any company whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this administrative regulation, the permit shall be reinstated.

Section 9. Revocation of Permits. For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the cabinet's personnel in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet, by the permit holder, within such ten (10) day period.~~] A permit may be suspended for cause pending its revocation or a hearing relative thereto.

Section 10. Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~All hearings shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding of fact and conclusion of law. A transcript of the hearing shall not be made unless the interested party assumes the costs thereof and a request in writing is made therefor at the time a hearing is requested.~~]

Section 11. Inspection Frequency. The cabinet shall inspect each new vending machine company prior to its operation and as often as deemed necessary thereafter by the cabinet. The cabinet shall inspect commissaries preparing food for vending purposes at least once every six (6) months and shall make as many additional inspections or reinspections as are necessary to obtain compliance with established requirements.

Section 12. Access for Inspection. Representatives of the cabinet, after proper identification shall be permitted to enter at any reasonable time, upon any private or public property within the Commonwealth of Kentucky where vending machines or commissaries are operated, or from which such machines are otherwise serviced, for the purpose of determining compliance with the vending machine law. The company shall make provisions for the cabinet's representatives to have access, either in company with an employee, or otherwise to the interior of all vending machines operated by the company.

Section 13. Inspection Records. Whenever the cabinet makes an inspection of a commissary or a vending machine location, they shall record their findings on inspection report forms provided for this purpose, and shall furnish a copy of such inspection report forms to the permit holder or his representative.

Section 14. Issuance of Notices. Whenever the cabinet makes an inspection of a commissary or a vending machine location and discovers that any requirements of this administrative regulation have been violated, it shall notify the company of such violations by means of an inspection report form or other written notices. In such notification, the cabinet shall:

(1) Set forth the specific violations found;

(2) Establish a specific and reasonable period of time for the correction of the violations found;

(3) State that failure to comply with any notice issued in accordance with the provisions of this administrative regulation may result

in suspension of permit;

(4) State that an opportunity for appeal from any notice or inspectional findings will be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400. [~~the cabinet within the period of time established in the notice for correction.~~]

Section 15. Service of Notices. Notices provided for under this administrative regulation shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the cabinet.

Section 16. Commissaries Located Outside of the Commonwealth of Kentucky. Food from commissaries located outside the jurisdiction of the Commonwealth of Kentucky may be sold within this state if such commissaries conform to the provisions of the state food service code or to substantially equivalent provisions of such state. To determine the extent of compliance for the issuance of a permit to a company located outside the state, the initial application for a permit and the application yearly thereafter shall be accomplished by a copy of the most recent sanitation inspection report from the responsible health authority having jurisdiction where such a commissary or commissaries are located. Out-of-state companies shall, upon request of the cabinet, submit copies of the most recent sanitation inspection report at other times during the permit year.

Section 17. Plan Review of Future Construction. Whenever a vending machine commissary is hereafter constructed or extensively remodeled, or whenever an existing structure is converted for use as a commissary, properly prepared plans and specifications for such construction, remodeling or alteration, showing layout, arrangements and construction materials of work areas, and the location, size and type of fixed equipment and facilities, and a plumbing riser diagram shall be submitted to and approved by the cabinet before work is begun.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Draper, Branch Manager

(1) Type and number of entities affected: 93 vending companies.

(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: None 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: None 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 increase.

2. Second and subsequent years: No increase.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: No change.

1. First year: No change.

2. Continuing cost or savings: No change.

3. Additional factors increasing or decreasing costs: No change.

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds from permits to operate.

(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 received.

(b) Kentucky: None received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives are available as the changes 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: This should enhance industry's rights of due process.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement proper hearing procedures would result in inability to carry out enforcement actions.

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied based upon the number of vending machines owned. Each vending commissary is a flat fee of $20.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

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. Local health department environmentalists carry out the provisions of this

administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Local health departments, environmental health programs. Local health department environmentalists carry out the environmental health programs.

4. How does this administrative regulation affect the local government or any service it provides? Local health department environmentalists conduct surveillance and enforcement activities of all environmental health programs.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 45:150. School sanitation.

RELATES TO: KRS 211.180, 212.210, 212.990

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 211.180 and 212.210 authorizes the Cabinet for Health Services [~~Human Resources~~] to regulate certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools. This administrative regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment. Executive Order 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.

Section 1. Citation of Regulation. This administrative regulation may be cited as "The Kentucky School Sanitation Regulation."

Section 2. Definitions. As used in this administrative regulation the following definitions shall apply:

(1) "Cabinet" means the Cabinet for Health Services [~~Human Resources~~], and its designated agents.

(2) "Local Board of Education" means a duly elected or appointed Board, any private agency, or organization who operates, controls, or supervises a school or system of schools.

(3) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a school.

(4) "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the 12th grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children. Privately operated facilities shall include only those areas used for school purposes.

(5) "Semipermanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other facilities and not made a fixed portion of any existing school structure.

Section 3. Water Supply. (1) The water supply shall be potable and from an approved public supply of a municipality or water district, if available. If a public water supply of a municipality or a water district is not available, the supply for the school shall be developed and approved pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet; if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the school supply shall be discontinued.

(2) The water supply shall be of adequate quantity and under sufficient pressure to permit unrestricted use.

(3) All drinking fountain installations shall meet the requirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and in a clean sanitary condition. Provision shall be made so that small children can drink with ease. In lieu of water fountains portable drinking water containers may be used. If portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and designed so that water may be withdrawn from the container only by water tap or faucet and shall be maintained in a sanitary condition. If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups are prohibited.

Section 4. Sewage and Solid Waste Disposal. (1) All sewage and liquid waste matter shall be disposed of into a public sewer system, if available. If a public sewer is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet and the Natural Resources and Environmental Protection Cabinet; if a public sewer system subsequently becomes available, connections shall be made to it and the school sewage disposal system shall be discontinued.

(2) All plumbing shall comply with the State Plumbing Code.

(3) All private sewage disposal systems shall be operated in a manner to not create a nuisance or possible hazard to public health.

(4) All waste paper and solid waste shall be disposed of so as not to create a health or safety hazard and in a manner approved by the Natural Resources and Environmental Protection Cabinet.

(5) Containers shall be provided in all classrooms and hallways for storage of solid waste. All bulk solid waste shall be stored in containers, adequate in number, with tight-fitting lids. All bulk solid waste storage areas shall be constructed and maintained to prevent the entry and harborage of insects, rodents, and other vermin. All solid waste containers shall be of easily cleanable construction, kept clean and in good repair.

Section 5. Restroom Facilities. (1) All schools shall provide restroom facilities pursuant to the requirements of the State Plumbing Code.

(2) All restrooms, locker rooms, and toilet, shower and hand-washing fixtures shall be maintained in a clean, sanitary condition.

(3) All restroom and locker room floors, walls, toilet partitions, ceilings, windows, and fixtures shall be maintained in good repair.

(4) A minimum of twenty (20) foot-candles of light shall be provided in all restrooms and locker rooms as measured at a height of thirty (30) inches above the floor.

(5) An ample supply of toilet tissue and soap shall be provided. Disposable paper towels, cloth roll-type dispenser towels, or electric hand-drying devices shall be provided. Easily cleanable waste receptacles shall be provided in each restroom and locker room and shall be kept clean and in good repair. Waste receptacles shall be of covered-type design in all restrooms and locker rooms for female teachers and female students in grades seven (7) and above.

(6) All hand-washing and shower facilities shall be supplied with hot and cold or tempered water under pressure. Temperature and pressure control devices shall be installed on all shower facilities pursuant to the requirements of the State Plumbing Code.

(7) All windows used for room ventilation in restrooms and locker rooms shall be screened to prevent the entry of insects and other vermin. All restrooms and locker rooms in schools without central heating and air-conditioning or other closed-environment type heating, ventilation, and air-conditioning systems shall have self-closing doors. Schools with less than ten (10) students shall not be required to have self-closing doors. In those schools at which closed-environment type HVAC systems are provided, self-closing doors are not required if

effective odor and insect entry control is demonstrated. In school restroom and locker room facilities used by small children, any self-closing devices on all doors shall be adjusted to provide closure without presenting a safety hazard to students.

Section 6. Lighting. (1) All school classrooms, study rooms, industrial arts shops, gymnasiums, enclosed swimming pools, auditoriums, stairways, and hallways shall be adequately lighted. All lighting shall be installed so that glare will be eliminated. Illumination levels as listed below shall be provided as measured at a height of thirty (30) inches above the floor:

Task or Area	Foot-candle Levels
Storage rooms	10
Hallways, stairways, auditoriums (during entry and exit)	20
General classrooms, gymnasiums, and enclosed swimming pools	50

In certain areas, as industrial arts work benches, power tool locations, welding, and foundry locations, art work benches, home economics kitchens, and laboratories, additional spot illumination shall be provided if necessary to maintain adequate lighting especially if safety hazards are present.

(2) Windows, shades, and light fixtures shall be kept clean and in good repair at all times the school is in session.

Section 7. Building, Heating and Ventilation. (1) All walls, ceilings, floors, furniture, drapes, curtains, and blinds shall be kept in good repair.

(2) All floors shall be kept clean and free of litter. All walls, ceilings, furniture, drapes, curtains, and blinds shall be kept clean. All floors shall be cleaned using dustless methods. Special attention shall be given to maintain floor areas around drinking fountains and toilet and hand-washing facilities free of water spillage.

(3) School buildings shall be maintained free of insect, or rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall be pursuant to applicable state laws and administrative regulations.

(4) Schools with ten (10) or more students shall provide sufficient storage space for outer clothing, play equipment, school supplies, and student's sack lunches. This space shall be easily accessible, well lighted, ventilated and be designed, constructed, and maintained to reduce fire hazards.

(5) Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty. All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for that use. All poisonous, caustic, and combustible materials shall be stored in a area separate and apart from food products. The use of soft drink or other food or drink containers for storage of toxic materials is expressly prohibited.

Section 8. Safety. (1) All school buildings shall have approved-type fire extinguishers provided of sufficient number and fire rating type as determined by the State Fire Marshal or local fire departments. All exists shall comply with the requirements of the State Fire Marshal.

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:

(a) Compresses and bandages.

1. One (1) inch compress on adhesive.

2. Assorted sterile bandage compresses in individual packages.

3. Triangular bandages. (two (2) x two (2)) and (four (4) x four (4))

4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled.

(b) Wire or thin board splints.

(c) Adhesive tape.

(d) Scissors.

(e) Forceps (two (2) inch splinter).

(f) Toothpicks.

(g) Paper cups.

(h) Iodine (mild).

(i) Aromatic spirits of ammonia.

(j) Thermometer.

(k) Soap.

(l) Petroleum jelly.

A current edition of the Red Cross First Aid Manual shall be available. The principal, head teacher, or a designated faculty member shall possess current, valid certification in the Red Cross Multimedia or Standard First Aid courses to render trained aid in case of injury.

(3) All play areas shall be designed, landscaped, and protected to provide a safe place for children to play. There shall be no obstructions in the area, and the ground shall be well drained and relatively level. Wells, cisterns, sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.

(4) All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition. Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or otherwise rendered inaccessible to students until it is repaired or replaced. The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained pursuant to the National Electrical Code and other applicable codes and regulations. The use of spliced electrical extension cords or other nonapproved electrical wiring, fixtures, or equipment is strictly prohibited. Buildings and equipment shall be maintained to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.

(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 9. Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If a representative of the cabinet makes an inspection of a school, he shall record his findings on an official cabinet inspection report form DFS-301 - School Inspection Report and provide the principal or head teacher with a copy. The inspection report shall:

(a) Set forth the specific violation(s) if found;

(b) Establish a specific and reasonable period of time for the correction of the violation(s) found;

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in further action being taken; and

(d) Advise the party inspected of its right to request a hearing on form DFS-212 - Request for Hearing before the cabinet. The request shall be filed within ten (10) days of the completed inspection.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~Following a request for a hearing before the cabinet, a hearing shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing shall not be made unless the interested party assumes the cost and a request is made at the time a hearing is requested.~~]

(4) Following inspections of school buildings and premises

required by this administrative regulation, the cabinet shall report suspected noncompliance with applicable requirements of other state agencies to those agencies.

Section 10. Existing Facilities and Equipment. Notwithstanding the other provisions of this administrative regulation, facilities and equipment being used by existing schools on the effective date of this administrative regulation, which do not fully meet the design and construction requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 1,200 schools statewide.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Additional printing costs of amended regulations and training of local health department personnel of 902 KAR 1:400 hearing procedures.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 212.210.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. Relates to local health departments and their respective boards of health who act as agents for the cabinet by carrying out the provisions of this administrative regulation.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect the local health departments and its' board of health.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 212.240 states "Duties of county health departments. County departments of health shall: (1) Administer and enforce in the county and in all cities and towns situated therein, except as otherwise provided by law, all applicable public health laws of the commonwealth and all of the rules and regulations of the cabinet for human resources and county board of health issued thereunder; ..."

4. How does this administrative regulation affect the local government or any service it provides? The service remains the same, but the proposed amendment to this administrative regulation will redefine the requirements for hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None exists.

2. State compliance standards. None exists

3. Minimum or uniform standards contained in the federal

mandate. None exists.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 47:040. Cellulose insulation.

RELATES TO: KRS 211.025, 211,090, 211.180, 217.700, 16 CFR 1209, 1404

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 95-79

NECESSITY AND FUNCTION: KRS 211.090 and 211.180 authorize the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to all matters of public health for the prevention and control of health hazards. The purpose of this administrative regulation is to establish a standard for cellulose insulation; to prescribe testing requirements and procedures for the flame resistance and corrosiveness of cellulose insulation and to set forth the labeling requirements of all containers of cellulose insulation to which this administrative regulation applies. These requirements are intended to reduce or eliminate unreasonable risk of injury to consumers from flammable and corrosive insulation. Executive Order 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. This administrative regulation shall apply to cellulose insulation that is a consumer product produced or distributed for sale to or for the personal use, consumption, or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise. This administrative regulation applies to cellulose insulation produced or distributed for sale to consumers for their direct installation or use, as well as cellulose insulation produced or distributed for installation by professionals.

Section 1. Definitions. (1) "Cellulose insulation" means cellulosic fiber, loose fill, thermal insulation suitable for blowing or pouring applications.

(2) "Cabinet" means the Cabinet for Health Services and its designated agents [~~Human Resources~~].

(3) "Risk of injury" means exposure to the chance of death, personal injury, or serious or frequent illness.

(4) "Manufacturer" means any person who manufactures or imports consumer products.

(5) "Distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except the term does not include a manufacturer or retailer of the product.

(6) "Retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by the person to a consumer.

(7) "Private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(8) "Manufactured" means to manufacture, produce or assemble.

(9) "To distribute in commerce" and "distribution in commerce" means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(10) "Commerce" means trade, traffic, commerce, or transportation.

Section 2. General Requirements. (1) All cellulose insulation to which this administrative regulation applies shall be noncorrosive; have a critical radiant flux at least 0.12 W/CM^2 for each of the three (3) specimens collected; and, have no evidence of flaming combustion or weight loss above fifteen (15) percent of the initial weight, for each of three (3) specimens, if tested in accordance with the procedures indicated in Section 3 of this administrative regulation.

(2) All manufacturers, importers and private labelers of cellulose insulation to which this administrative regulation applies shall certify their products comply with 16 CFR 1209 in accordance with requirements for conducting a reasonable testing program as indicated in Section 3(4) of this administrative regulation.

(3) All containers of cellulose insulation to which this administrative regulation applies, shall have the following compliance labeling statement: "This product meets the amended CPSC standard for flame resistance and corrosiveness of cellulose insulation." To meet this requirement:

(a) Manufacturers and private labelers may use any type of label, including one which is pressure sensitive or glued on, if the label is made in a manner that it will remain attached to the container for the expected time interval between the manufacture of the product and its installation.

(b) The label shall appear prominently and conspicuously on the container in letters which are at least one-fourth (1/4) inch in height.

(c) The labeling statement shall be printed with legible type in a color which contrasts with the background on which the statement is printed.

(4)(a) The following cautionary labeling shall also appear on all containers of cellulose insulation: "CAUTION; POTENTIAL FIRE HAZARD: Keep insulation at least three (3) inches away from the sides of recessed light fixtures. Do not place insulation over such fixtures so as to entrap heat.

Also keep this insulation away from exhaust flues of furnaces, water heaters, space heaters, or other heat-producing devices.

To be sure that insulation is kept away from light fixtures and flues, use a barrier to permanently maintain clearance around these areas. Check with local building or fire officials for guidance on installation and barrier requirements.

REQUEST TO INSTALLER: Remove this label and give it to the consumer at completion of job."

(b) The cautionary labeling statement required shall comply with the following conditions:

1. Appear prominently and conspicuously on the container.

2. The word "CAUTION" shall appear in capital letters at least one-fourth (1/4) inch in height.

3. The words "POTENTIAL FIRE HAZARD" and "REQUEST TO INSTALLER" shall appear in capital letters at least three-sixteenths (3/16) inch in height.

4. The remainder of the statement shall appear in capital letters at least three-sixteenths (3/16) inch in height, with lower case letters in corresponding proportion at least one-eighth (1/8) inch in height.

5. The labeling statement shall be enclosed within a rectangle formed with lines at least one-sixteenth (1/16) inch in width and be printed with legible type in a color which contrasts with the background on which the statement is printed.

6. Manufacturers may use any type of label, including one which is pressure sensitive or glued on, if the label is made in a manner that it will remain attached to the container for the expected time interval between the manufacture of the product and its installation.

(c) Manufacturers of cellulose insulation may substitute the phrase "TO HELP AVOID FIRE" for the phrase "POTENTIAL FIRE HAZARD" in the label described above. Manufacturers may also delete the word "cellulose" from the first sentence of the label and may delete the word "this" from the third sentence of the label. The remainder of the label statement shall appear exactly as described above.

Section 3. Cellulose Testing and Certification of Compliance. Cellulose insulation shall be certified for compliance and tested in accordance with the procedures prescribed in CFR 1209, July 6, 1979, Interim Safety Standard for Cellulose Insulation, as specified in this section. The following specifications are adopted without change:

(1) 16 CFR Part 1209, Section 1209.5 - Test procedures for corrosiveness.

(2) 16 CFR Part 1209, Section 1209.6 - Test procedures for critical radiant flux.

(3) 16 CFR Part 1209, Section 1209.7 - Test procedures for smoldering combustion.

(4) 16 CFR Part 1209, Section 1209.33 - Reasonable testing program.

(5) 16 CFR Part 1209, Section 1209.34 - Qualification testing.

Section 4. A copy of the referenced federal regulations indicated in this administrative regulation is on file in the Office of the Commissioner, Department of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday through Friday, 8 a.m. to 4:30 p.m. Copies of these federal regulations are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 5. Cellulose Insulation Manufactured not in Compliance with this Administrative Regulation. Any cellulose insulation manufactured in the Commonwealth of Kentucky or distributed for sale to, or the personal use, consumption or permanent or temporary use in a household or residence, a school, in recreation, or otherwise in this Commonwealth, shall be deemed a prohibited product and prohibited from distribution in commerce if found to be not in compliance with this administrative regulation.

Section 6. Compliance. Cellulose insulation, which is in compliance with applicable standards adopted by the U. S. Consumer Product Safety Commission, shall be considered to be in compliance with this administrative regulation. In the event of a variance between this administrative regulation and the regulations adopted by the U. S. Consumer Product Safety Commission relating to cellulose insulation, compliance with the federal regulations shall be deemed compliance with the provisions of this administrative regulation.

Section 7. Issuance and Service of Notice of Violation. (1) If test procedures prescribed in Section 3 of this administrative regulation reveal the cellulose insulation is not in compliance with the established standards, the cabinet shall notify the owner of violations by means of a written notice. The notification shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of violations.

(c) State that an opportunity for appeal from any notice of inspectional findings will be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of inspectional findings.

(2) Notices provided for under this administrative regulation shall be deemed to have been properly served if the written notification of findings has been delivered personally to the owner of the cellulose insulation manufacturing firm or person in charge, or if such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge. A copy of such notice shall be filed in the records of the cabinet.

Section 8. Hearings. Upon timely receipt of a written request for an appeal of the findings of any inspection under the authority of this administrative regulation, the cabinet shall afford an aggrieved party the opportunity for a hearing. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~A hearing pursuant to this administrative regulation shall be conducted at a time and place designated by the cabinet. The cabinet shall make written findings of fact and conclusions of law upon the record. A transcription of the hearing shall be provided to any interested party who requests the transcription and assumes the cost thereof.~~]

Section 9. Quarantine. In the event cellulose insulation does not meet the applicable standards adopted by the U. S. Consumer Product Safety Commission as to flammability, corrosiveness, labeling requirements; certification or other standards adopted by the commission after the effective date of this administrative regulation, the cabinet may, if it deems the article to be dangerous to public health, quarantine the article pursuant to KRS 217.700.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: One in-state manufacturer and approximately 100 interstate distributors of celllulose products.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(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: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the

requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 217.700.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No effect.

3. State the aspect or service of local government to which this administrative regulation relates. No relation.

4. How does this administrative regulation affect the local government or any service it provides? No effect.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 CFR Part 1404, Cellulose Insulation.

2. State compliance standards. Testing and labeling requirements.

3. Minimum or uniform standards contained in the federal mandate. Federal mandate covers scope,application, effective date, background information, component testing methods, and labeling requirements.

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. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 47:050. Ban of paint, coatings, and certain consumer products containing lead.

RELATES TO: KRS 211.901 to 211.905, 211.994, 217.801, 217.990(7)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.180, 211.901, EO 95-79

NECESSITY AND FUNCTION: KRS 211.090 and 211.180 authorize the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations for the prevention and control of health hazards. In addition, KRS 211.901 authorizes the cabinet to adopt administrative regulations for the prevention of lead poisoning. The function of this administrative regulation is to ban lead-containing paint and similar surface coatings and toys, certain furniture and other consumer products on which lead-containing paint and coatings are used. Executive Order 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.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services and its designated agents. [~~The definition "cabinet" is governed by KRS 217.660(2).~~]

(2) "Consumer product" means the article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption or enjoyment of the consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, but the term does not include:

(a) Articles not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of the consumer;

(b) Tobacco or tobacco products;

(c) Motor vehicle, or motor vehicle equipment;

(d) Economic poisons;

(e) Aircraft or related equipment or appliances;

(f) Boats, vessels, or appurtenances to such;

(g) Drugs, devices, or cosmetics;

(h) Foods or feed.

(3) "Paint and other similar surface coatings" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film if a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, like as the pigment in a plastic article, or those materials which are actually bonded to the substrate, by electroplating or ceramic glazing.

(4) "Lead-containing paint" means paint or other similar surface coatings containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint or coating film.

(5) "Toys and other articles intended for use by children" means those toys and other articles which are intended to be entrusted to or for use by children. This does not include all articles to which children might have access simply because they are present in a household.

(6) "Furniture article" means those movable articles: used to support people or things; other functional or decorative furniture articles, including, but not limited to, products such as beds, bookcases, chairs, chests, tables, dressers, desks, pianos, console, televisions, and sofas. The term "furniture article" does not include appliances, such an ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers, and dehumidifiers,

fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; or household items such as window shades, venetian blinds, or wall hangings and draperies.

Section 2. Scope and Application. (1) The manufacture or distribution of lead-containing paint and similar surface coatings for general consumer use; toys and other articles intended for use by children that bear lead-containing paint or similar surface coatings; and furniture articles for consumer use that bear lead-containing paint or similar surface coatings are hereby banned within the Commonwealth of Kentucky.

(2) The ban applies to the products in the categories described in subsection (1) of this section which are "consumer products" as defined in Section 2(2) of this administrative regulation which includes those articles produced for use by the consumer in or around the home, in the school, in recreation or otherwise covered by this administrative regulation. Paints for motor vehicles and boats are not included since they are not within the definition of "consumer product." The ban, in addition to applying to products sold directly to consumers, does apply to products which, after sale, are used or enjoyed by consumers, like paints and similar surface coatings used on residences, schools, hospitals, parks, playgrounds, public buildings, and other areas where consumers have direct access to the painted or coated surface.

(3) The ban is considered necessary since it has been determined by the scientific community that there is an unreasonable risk of lead poisoning in children associated with and having access to paints and similar surface coatings containing lead in excess of 0.06 percent by weight of the total nonvolatile content or weight of the dried paint or coating film.

Section 3. Exemptions. (1) The following categories of products are exempt from the scope of the ban established by this administrative regulation provided they comply with the requirements of subsection (2) or (3) of this section:

(a) Agricultural and industrial equipment refinish coatings;

(b) Industrial (and commercial) building nd equipment, maintenance, coatings, including traffic and safety marking coatings;

(c) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings);

(d) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances;

(e) Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

(2) The products listed in subsection (1) of this section are exempted provided:

(a) That these products bear on the main panel of their label, in addition to the labeling that may be otherwise required, the signal word "Warning" (unless some other signal word is required) and the following statement: "Contains Lead. Dried Film of This Paint May Be Harmful If Eaten or Chewed."

(b) That these products also bear on the main or secondary panel of the label the following additional statement or its practical equivalent: "Do not apply on toys and other children's articles, furniture, or interior surfaces of a dwelling or facility which may be occupied or used by children." "Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed." "Keep out of reach of children." If the statement required by the preceding subsection is placed on a label panel other than the main panel, the label statement required to be on the main panel shall contain the following additional statement: "See other cautions on _____ (insert 'side' or 'back,' as appropriate) panel."

(c) The placement, conspicuousness, contrast, and type size of the label statements required by this section shall comply with the requirements of the Kentucky Hazardous Substances Labeling Act, KRS 217.650 to 217.710 and 217.993, the U.S. Consumer Product Safety Act (PL 92-573; 15 USC 2051, et seq.) as amended, and regulations adopted pursuant thereto.

(3) The following products are exempt from the scope of the ban established by this section and no cautionary labeling is required:

(a) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paints;

(b) Artists' paints and related materials;

(c) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

Section 4. Test Procedures. The test procedures prescribed in the standards established by the Association of Official Analytical Chemist, 14th Edition, shall be applicable to administrative regulations adopted by the cabinet relating to paint and similar surface coatings. A copy of this publication is available in the Office of the Commissioner, Department of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday - Friday, 8 a.m. - 4:30 p.m. A copy of the publication may be obtained by writing to the Association of Official Analytical Chemist, Inc., 1111 N. 19th Street, Suite 210, Arlington, VA 22209.

Section 5. Compliance. Paint and other similar surface coatings which are in compliance with applicable standards adopted by the United States Consumer Product Safety Commission, shall be considered to be in compliance with this administrative regulation. In the event of a variance between this administrative regulation and the regulations adopted by the United States Consumer Product Safety Commission relating to paint and other similar surface coating materials, compliance with the federal regulations shall be deemed compliance with the provisions of this administrative regulation.

Section 6. Issuance and Service of Notice of Noncompliance. (1) If test procedures prescribed in Section 4 of this administrative regulation reveal that paint or other similar surface coatings are not in compliance with the standards set forth therein, the cabinet shall notify the owner of the violations in writing. The notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the violations; and

(c) State that an opportunity for appeal from the notice of noncompliance shall be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of noncompliance.

(2) A notice shall be deemed to have been properly served if it has been:

(a) Personally delivered to the owner of the paint or coatings manufacturing firm or person in charge; or if

(b) Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge.

(c) A copy of the notice shall be filed in the records of the cabinet.

Section 7. Hearings. [~~(1)~~] If an appeal of a notice of noncompliance is filed as provided by Section 4 of this administrative regulation, the cabinet shall conduct a hearing in accordance with 902 KAR 1:400. [~~:~~

~~(a) Schedule a hearing; and~~

~~(b) Inform the person appealing a notice of noncompliance of the date, time, and place of the hearing.~~

~~(2) The cabinet shall make written findings of fact and conclusions of law.~~]

Section 8. Quarantine and Recall. (1) If a paint or similar surface coating; toy or other article intended for use by children or furniture for consumer use does not comply with the provisions of this administrative regulation, the manufacturer, distributor, or importer of the product may be:

(a) Requested by the cabinet to be voluntarily recalled from wholesale or retail establishments to which they were distributed; or

(b) Ordered by the cabinet to recall the product.

(2) A product that does not comply with the provisions of this administrative regulation may be quarantined by the cabinet.

(3) If the product is recalled, the cabinet shall be provided with:

(a) A copy of the recall notification;

(b) A list of all establishments contacted;

(c) The amount or number of the products returned to the manufacturer, distributor or importer; and

(d) The disposition of the flammable fabric or flammable fabric products recalled.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 20 in-state manufacturers and approximately 1,000 interstate manufacturers of paint and painted consumer products.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(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: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 217.801.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

3. State the aspect or service of local government to which this administrative regulation relates. No relation.

4. How does this administrative regulation affect the local government or any service it provides? No effect.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 CFR Part 1303, Ban of Lead Containing Paint and Certain Consumer Products Bearing Lead Containing Paint.

2. State compliance standards. Testing requirements for levels of lead and labeling requirements.

3. Minimum or uniform standards contained in the federal mandate. Testing requirements for levels of lead and labeling requirements.

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. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 47:060. Safety of toys and children's products.

RELATES TO: KRS 211.180
STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.180, EO 95-79
NECESSITY AND FUNCTION: KRS 194.050, 211.090 and 211.180 authorize the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to all matters of public health including the detection, prevention, and control of home accidents and health hazards and the control of other factors, not assigned by law to another agency, as may be necessary to insure a safe environment, and administrative regulations for the protection and improvement of health of infants, preschool and school age children. The function of this administrative regulation is to establish uniform safety standards, labeling requirements, and testing procedures for toys and certain children's products. Executive Order 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.

Section 1. Safety Standards, Labeling Requirements, and Testing Procedures for Toys and Children's Products are governed by 16 Code of Federal Regulations (CFR) Parts 1501, 1505, 1508, 1509, 1510, 1511, and 1512 January 1, 1991 as specified in this section. The federal regulations specified in this section are adopted without change.

(1) 16 CFR Part 1501, Sections 1501.1 through 1501.4 - Methods for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards because of Small Parts.

(2) 16 CFR Part 1505, Sections 1505.1 through 1505.8 and 1505.50 - Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children.

(3) 16 CFR Part 1508, Sections 1508.1 through 1508.11 - Requirements for Full-size Baby Cribs.

(4) 16 CFR Part 1509, Sections 1509.1 through 1509.13 - Requirements for Nonfull-size Baby Cribs.

(5) 16 CFR Part 1510, Sections 1510.1 through 1510.4 - Requirements for Rattles.

(6) 16 CFR Part 1511, Sections 1511.1 through 1511.8 - Requirements for Pacifiers.

(7) 16 CFR Part 1512, Sections 1512.1 through 1512.20 and Sec. 1512.50 - Requirements for Bicycles.

Section 2. A copy of these federal regulations is on file in the Office of the Commissioner, Department of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday through Friday, 8 a.m. to 4:30 p.m. Copies of these federal regulations are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 3. Compliance. Toys and children's products which are in compliance with standards established in the federal regulations adopted without change in this administrative regulation, shall be deemed to be in compliance with this administrative regulation.

Section 4. Issuance and Service of Notice of Noncompliance. (1) If test procedures adopted without change by this administrative regulation reveal that toys and children's products are not in compliance with the standards set forth therein, the cabinet shall notify the owner of the violations in writing. The notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the violations; and

(c) State that an opportunity for appeal from the notice of noncompliance shall be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of noncompliance.

(2) A notice shall be deemed to have been properly served if it has been:

(a) Personally delivered to the owner of the manufacturing, wholesaling, or importing firm or person in charge; or if

(b) Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge.

(c) A copy of the notice shall be filed in the records of the cabinet.

Section 5. Hearings. [~~(1)~~] If an appeal of a notice of noncompliance is filed as provided by Section 4 of this administrative regulation, the cabinet shall conduct a hearing in accordance with 902 KAR 1:400. [~~:~~

~~(a) Schedule a hearing; and~~

~~(b) Inform the person appealing a notice of noncompliance of the date, time, and place of the hearing.~~

~~(2) The cabinet shall make written findings of fact and conclusions of law.~~]

Section 6. Quarantine and Recall. (1) If a toy or children's product does not comply with the provisions of this administrative regulation, the manufacturer, distributor, or importer of the toy or children's product may be:

(a) Requested by the cabinet to voluntarily recall the toy or children's product from wholesale or retail establishments to which they were distributed; or

(b) Ordered by the cabinet to recall the toy or children's product.

(2) A toy or children's product that does not comply with the provisions of this administrative regulation may be quarantined by the cabinet.

(3) If a toy or children's product is recalled, the cabinet shall be provided with:

(a) A copy of the recall notification;

(b) A list of all establishments contacted;

(c) The amount or number of toys or children's products returned to the manufacturer, distributor or importer; and

(d) The disposition of the toys or children's products recalled.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 50 in-

state and 1,000 interstate manufacturers and distributors of toys and children's products.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(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: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 217.700.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. No relation.

4. How does this administrative regulation affect the local government or any service it provides? No effect.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 CFR Part 1501, 1505, 1508, 1509, 1510, 1511, and 1512.

2. State compliance standards. Testing and testing methodology and label review.

3. Minimum or uniform standards contained in the federal mandate. Testing and testing methodology and label review .

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 Environmental Health and Community Safety
(Amendment)

902 KAR 47:070. Standards for flammable fabrics and flammable fabric products.

RELATES TO: KRS 211.180

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.180, EO 95-79

NECESSITY AND FUNCTION: KRS 194.050, 211.090 and 211.180 authorize the Cabinet for Health Services [~~Human Resources~~] to adopt administrative regulations relating to all matters of public health including the detection, prevention, and control of home accidents and health hazards and the control of other factors, not assigned by law to another agency, as may be necessary to insure a safe environment. The function of this administrative regulation is to establish uniform flammability safety standards, labeling requirements, and testing procedures for clothing textiles, vinyl plastic films, children's sleepwear, carpets and rugs, and mattresses and mattress pads. Executive Order 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.

Section 1. Safety Standards, Labeling Requirements, and Testing Procedures for Flammable Fabrics and Flammable Fabric Products are governed by 16 Code of Federal Regulations (CFR) Parts 1610, 1611, 1615, 1616, 1630, 1631, 1632 January 1, 1991, as specified in this section. The federal regulations specified in this section are adopted without change.

(1) 16 CFR Part 1610, Sections 1610.1 through 1610.5; 1610.31 through 1610.40 and 1610.61 - Standard for the Flammability of Clothing Textiles.

(2) 16 CFR Part 1611, Sections 1611.1 through 1611.4 and 1611.31 through 1611.38 - Standard for the Flammability of Vinyl Plastic Film.

(3) 16 CFR Part 1615, Sections 1615.1 through 1615.5; 1615.31

through 1615.36; and 1615.62 through 1615.64 - Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71).

(4) 16 CFR Part 1616, Sections 1616.1 through 1616.6; 1616.31 through 1616.36 and 1616.62 through 1616.65 - Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74).

(5) 16 CFR Part 1630, Sections 1630.1 through 1630.5; 1630.31 through 1630.32 and 1630.61 through 1630.63 - Standard for the Surface Flammability of Carpets and Rugs (FF 1-70).

(6) 16 CFR Part 1631, Sections 1631.1 through 1631.5; 1631.31 through 1631.34, 1631.61, and 1631.62 - Standard for the Surface Flammability of Small Carpets and Rugs (FF 2-70).

(7) 16 CFR Part 1632, Sections 1632.1 through 1632.8; 1632.31 and 1632.63 - Standards for the Flammability of Mattresses and Mattress Pads (FF 4-72, Amended).

Section 2. A copy of these federal regulations is on file in the Office of the Commissioner, Department of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday through Friday, 8 a.m. to 4:30 p.m. Copies of these federal regulations are also available from the Superintendent of Documents, U.S. Government Printing Office Washington, D.C. 20402.

Section 3. Compliance. Flammable fabrics and flammable fabric products which are in compliance with standards established in the federal regulations adopted without change in this administrative regulation, shall be deemed to be in compliance with this administrative regulation.

Section 4. Issuance and Service of Notice of Noncompliance. (1) If test procedures adopted without change by this administrative regulation reveal that flammable fabrics and flammable fabric products are not in compliance with the standards set forth therein, the cabinet shall notify the owner of the violations in writing. The notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the violations; and

(c) State that an opportunity for appeal from the notice of noncompliance, in accordance with 902 KAR 1:400, shall be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of noncompliance.

(2) A notice shall be deemed to have been properly served if it has been:

(a) Personally delivered to the owner of the manufacturing, wholesaling, or importing firm or person in charge; or if

(b) Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge;

(c) A copy of the notice shall be filed in the records of the cabinet.

Section 5. Hearings. (1) If an appeal of a notice of noncompliance is filed as provided by Section 4 of this administrative regulation, the cabinet shall:

(a) Schedule a hearing; and

(b) Notify the appellant in accordance with KRS 13B.050. [~~Inform the person appealing a notice of noncompliance of the date, time, and place of the hearing.~~]

(2) The cabinet shall conduct the hearing in accordance with 902 KAR 1:400. [~~The cabinet shall make written findings of fact and conclusions of law.~~]

Section 6. Quarantine and Recall. (1) If a flammable fabric or flammable fabric product does not comply with the provisions of this administrative regulation, the manufacturer, distributor, or importer of the flammable fabric or flammable fabric product may be:

(a) Requested by the cabinet to voluntarily recall the flammable fabric or flammable fabric product from wholesale or retail establishments to which they were distributed; or

(b) Ordered by the cabinet to recall the flammable fabric or flammable fabric product.

(2) A flammable fabric or flammable fabric product that does not comply with the provisions of this administrative regulation may be quarantined by the cabinet.

(3) If a flammable fabric or flammable fabric product is recalled, the cabinet shall be provided with:

(a) A copy of the recall notification;

(b) A list of all establishments contacted;

(c) The amount or number of flammable fabric or flammable products returned to the manufacturer, distributor or importer; and

(d) The disposition of the flammable fabric or flammable fabric products recalled.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, 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: David M. Nichols, Branch Manager

(1) Type and number of entities affected: Approximately 25 in-state and 250 interstate manufactures of mattresses, children's sleepwear, and small rugs and carpets.

(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: This amendment to the existing administrative regulation will have no effect on the cost of living or employment in the 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 comment received: This amendment to the existing administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: No expected increase in reporting or paperwork.

2. Second and subsequent years: No expected increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(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: There are no additional reporting or paperwork requirements required in this amendment to the existing administrative regulation.

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

There will be no effect on state or local revenues attributed to the requirements of this amendment to the existing administrative regulation.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue to exist on program inspection and permit fees.

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

(a) Geographical area in which administrative regulation will be implemented: This amended administrative regulation will not have any additional economic impact on providers or on the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment to the existing administrative regulation will cause cabinet hearing procedures to be uniform in each program area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Uniform hearing procedures for all programs should increase efficiency and timeliness of corrections of health hazards.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect, would revert to old hearing procedures.

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: This administrative regulation is in compliance with KRS 217.700.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: The purpose of this amendment to the existing administrative regulation is to meet hearing requirement procedures outlined in 902 KAR 1:400.

(11) TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. No relation.

4. How does this administrative regulation affect the local government or any service it provides? No effect.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 CFR Part 1610, 1611, 1615, 1616, 1630, 1631, and 1632.

2. State compliance standards. Testing and testing methodology and label review.

3. Minimum or uniform standards contained in the federal mandate. Testing and testing methodology and label review.

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. N/A

CABINET FOR HEALTH SERVICES
Department for Health Services
(Amendment)

902 KAR 55:010. Licensing of manufacturers and wholesalers.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 218A.250, HB 799 of the 1990 GA, EO 95-79

NECESSITY AND FUNCTION: KRS 218A.150, 218A.160 and 218A.170 authorizes the Cabinet for Health Services [~~Human Resources~~] to license manufacturers and wholesalers of controlled substances. It is the purpose of this administrative regulation to establish uniform requirements for such licenses. Executive Order 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.

Section 1. State License Required of Manufacturers and Wholesalers. No person shall manufacture, wholesale, distribute, or repack any controlled substance in this state without having first obtained a license to do so from the Cabinet for Health Services [~~Human Resources~~].

Section 2. Out-of-state Exemptions. Manufacturers, wholesalers, distributors, and repackers not located within the Commonwealth of Kentucky, but who are registered with the appropriate federal agency pursuant to the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (PL 91-513: 84 Stat. 1236) and the regulations promulgated thereunder, are hereby exempted from the licensure requirements of this administrative regulation and are authorized to operate as such in this state by virtue of their federal registration.

Section 3. Joint Venture Exemptions. Two (2) or more pharmacies, who engage in a joint venture for the purpose of purchasing drugs in order to effectuate a savings in the purchase price thereof and in which no profit is realized in the transaction by any of the participating pharmacies, are exempt from the licensure requirements of this administrative regulation provided proper records of the transaction are maintained.

Section 4. Qualifications for Licensing. (1) No license shall be issued pursuant to this administrative regulation unless and until the applicant has furnished proof satisfactory to the Cabinet for Health Services [~~Human Resources~~]:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to controlled substances and is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(2) No license shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.

(3) A license issued pursuant to this administrative regulation may be suspended or revoked for cause.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 5. License Fees; Renewals. All applications for a license under the provisions of this administrative regulation shall be submitted to the Cabinet for Health Services [~~Human Resources~~] on forms furnished by the department and shall be accompanied by a license fee of $240. All licenses shall expire on June 30th following

date of issuance and be renewable annually thereafter upon payment of a renewal fee of $175 and shall be nontransferable.

Section 6. Codeine Registry. All wholesalers and manufacturers (including distributors and repackers) shall keep a separate codeine registry showing the following: date, registration number of recipient, name of recipient, address, name of preparation, and quantity.

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: May 9, 1996
FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: Eighteen manufacturers, wholesalers, distributors or repackers of controlled substances are affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(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 on this issue.

(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 is no compliance, reporting or paperwork required by this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because they would conflict with the requirements of 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: 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: No statute, regulation, or policy conflicts, overlaps or duplicates 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? Tiering was not applied because the statutory requirements are identical for all manufacturers, wholesalers, distributors and repackers regardless of size, type of business or location.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. The criteria for licensing are set forth in KRS 218A.160.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirements are not stricter because there is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate; therefore justification is not required.

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. Local government does not regulate controlled substances.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation will not affect any part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not relate to any aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation has no effect on local government.

CABINET FOR HEALTH SERVICES
Department for Health Services
(Amendment)

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

RELATES TO: KRS 218A.180, 218A.200

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 218A.250, EO 95-79

NECESSITY AND FUNCTION: KRS 218A.250 directs the Cabinet for Health Services [~~Human Resources~~] to adopt rules and adminis-

trative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to authorize the storage in an emergency medication kit in certain long-term care facilities of limited quantities of controlled substances to be administered if prescribed by a physician. Executive Order 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.

Section 1. Storage of Controlled Substances in an Emergency Medication Kit. A pharmacy provider may store controlled substances in an emergency medication kit in a nursing home, nursing facility, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded if:

(1) The written policies and procedures of the facility regarding the procurement, use, storage, security, replacement, and record-keeping of controlled substances in the kit are filed with the facility and with the provider pharmacy;

(2) The controlled substances in the kit are the property of the provider pharmacy who is responsible for their proper labeling, storage, security, and accountability;

(3) The controlled substances stored in the kit are selected jointly by the facility's medical director or other physician, consultant pharmacist, and the director of nursing;

(4) The controlled substances selected for inclusion in the kit are injectable and limited to two (2) doses each of three (3) different controlled substances;

(5) The controlled substances in the kit are administered only upon the order of a physician who determines that the patient has an immediate medical need;

(6) The access to the controlled substances in the kit is limited to a physician, pharmacist, registered nurse, or other person authorized by law in this state to administer the prescribed medication;

(7) The provider pharmacy is notified by the facility within twenty-four (24) hours after the kit has been opened;

(8) The prescribing physician issues a written prescription for the controlled substances to the provider pharmacy within seventy-two (72) hours after administration of a controlled substance from the kit;

(9) The facility maintains a record of the administration of controlled substances from the kit in accordance with applicable state and federal laws;

(10) The provider pharmacy documents a physical inventory of the controlled substances in the kit at least monthly; and

(11) The loss of any controlled substance from the kit is reported to the Cabinet for Health Services [~~Human Resources~~] in accordance with KRS 218A.200(4) and to the Federal Drug Enforcement Administration in accordance with 21 CFR 1301.74(c).

Section 2. The Cabinet for Health Services [~~Human Resources~~] may deny, suspend, or revoke the privilege of storing controlled substances in an emergency medication kit if any provision in Section 1 of this administrative regulation is violated. All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

[~~(1) Upon notification of intent to deny, suspend or revoke the pharmacy provider may request a hearing. The request for a hearing shall be made in writing on Form DCB-2, "Request for Hearing," and received by the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DCB-2, "Request for Hearing," revised October, 1993, is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.~~

~~(2) The cabinet shall notify the requesting party in writing of the:~~

~~(a) Name of the hearing officer; and~~

~~(b) Time and place of the hearing.~~

~~(3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:~~

~~(a) Be represented by counsel;~~

~~(b) Present evidence on his behalf; and~~

~~(c) Cross-examine witnesses.~~

~~(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.~~

~~(5) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The hearing officer's decision shall be the final decision of the cabinet.~~]

RICE C. LEACH, MD, Commissioner
JOHN MORSE, Secretary
APPROVED BY AGENCY: May 9 1996
FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held June 21, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 16, 1996. 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. 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 to: William K. Moore, Acting General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: Approximately 400 long-term care facilities in the Commonwealth are affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

(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 on this issue.

(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 is no compliance, reporting or paperwork required by this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected compliance with KRS Chapter 13B is required.

(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 or environmental welfare are anticipated by this amendment.

(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: If the administrative regulation is not implemented, the hearing procedure established by the regulation will conflict with KRS Chapter 13B.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates 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? Tiering was applied because only the long-term care facilities designated in the administrative regulation are required to have personnel qualified to administer drugs in an emergency situation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The related federal requirements were issued in a Statement of Policy (45 Fed. Reg. 40576, June 16, 1980).

2. State compliance standards. In order to comply with this regulation a long-term care facility must adopt policies and procedures which define (a) the source of controlled substances, (b) proper security and limited access, (c) the specific controlled substances to be utilized, (d) the circumstances under which the controlled substances may be administered and (e) the recordkeeping required to meet all federal and state laws and regulations.

3. Minimum or uniform standards contained in the federal mandate. Same as state compliance standards listed above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes no requirements or responsibilities different than federal policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not 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. Local government does not regulate controlled substances.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation will not affect any part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not relate to any aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation has no effect on local government.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 100:040. General provisions for specific licenses.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.844, EO 95-79

NECESSITY AND FUNCTION: Executive Order 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 211.844 authorizes the Cabinet for Health Services [~~Human Resources~~] to provide by administrative regulation for the regulation and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides general provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material within Kentucky.

Section 1. License Requirement. Except for persons exempted by 902 KAR 100:015 and 902 KAR 100:045, a person shall not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued in accordance with 902 KAR Chapter 100. Authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices or commodity, or other products containing radioactive material whose subsequent possession, use, transfer and disposal by other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555.

Section 2. Types of Licenses. (1) Licenses for radioactive material shall be of two (2) types:

(a) General; and

(b) Specific.

(2) Except as specified in 902 KAR 100:050, general licenses shall be:

(a) Effective without the filing of an application with the cabinet or the issuance of licensing documents to the licensee; and

(b) Subject to other applicable requirements of 902 KAR Chapter 100 and limitations of 902 KAR 100:050.

(3) Specific licenses shall require:

(a) The submission of an application to the cabinet; and

(b) The issuance of a licensing document by the cabinet.

(4) The license shall be subject to applicable requirements of 902 KAR Chapter 100 and to limitations specified in the licensing document.

Section 3. Filing of Application for a Specific License. (1) An application for "specific license" shall be filed with the Cabinet for Health Services [~~Human Resources~~] on "Form RPS-7". The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2)(a) The cabinet may at a time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the cabinet to determine whether:

1. The application shall be granted or denied; or

2. A license shall be modified or revoked.

(b) Prelicensing visits may be made to the applicant's facility for the purpose of obtaining information in addition to that furnished in

the original application.

(c) If the applicant or licensee fails to respond to a request in writing forwarded by certified mail for additional information within thirty (30) days of the date of the receipt of the request, or within another specified time if health and safety are threatened, the cabinet may suspend, modify or revoke the license in accordance with 902 KAR 100:170 or deny the application.

(3) The application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities if the application specifies the additional activities and complies with the provisions of 902 KAR Chapter 100 relating to specific licenses.

(5) The applicant may incorporate in the application, by reference, information contained in previous applications, statements, or reports filed with the cabinet, if references are clear and specific.

Section 4. General Requirements for the Issuance of a Specific License. (1) A license application shall be approved if the cabinet determines:

(a) The applicant is qualified by reason of training and experience to use the radioactive material in question for the purpose requested in accordance with 902 KAR Chapter 100 and in a manner as to minimize danger to public health and safety or property;

(b) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(c) The issuance of the license will not be adverse to the health and safety of the public; and

(d) The applicant satisfies applicable special requirements in 902 KAR Chapter 100.

(2) For an application for a license to receive and possess radioactive material which the cabinet determines will significantly affect the quality of the environment, the following shall apply:

(a) The secretary of the cabinet or his designee shall, before commencement of construction of the plant or facility in which the activity is to be conducted, weigh the environmental, economic, technical, and other benefits against environmental costs and consider available alternatives;

(b) A license application may be approved if the cabinet determines after consideration of the factors described in paragraph (a) of this subsection, that the action called for is the issuance of the proposed license, with appropriate conditions to protect environmental values;

(c) Commencement of construction prior to the determination shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

1. As used in this subsection, the term "commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

2. The term shall not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(3)(a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under a chapter of Title 11 (bankruptcy) of the United States Code by or against:

1. The licensee;

2. An entity (as that term is defined in 11 USC 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate (as that term is defined in 11 USC 101(2)) of the licensee.

(b) This notification shall indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and

2. The date of the filing of the petition.

(4) Information provided to the cabinet by an applicant for a license or by a licensee or information required by 902 KAR Chapter 100, orders or license conditions to be maintained by the applicant or licensee shall be complete and accurate in all material aspects.

Section 5. Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of KRS 211.842 to 211.852 and 902 KAR Chapter 100, the cabinet may issue a specific license authorizing the proposed activity in a form containing conditions and limitations as it deems appropriate or necessary.

(2) The cabinet may incorporate in a license when issued, or thereafter by appropriate rule, 902 KAR Chapter 100, or order, or as otherwise specified in Section 13 of this administrative regulation, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to 902 KAR Chapter 100 as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require reports and the keeping of records, and provide for inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss or theft of licensed material.

Section 6. Specific Terms and Conditions of Licenses. (1) A license issued pursuant to this administrative regulation shall be subject to the provisions of KRS 211.842 to 211.852, 902 KAR Chapter 100, and orders of the cabinet.

(2) Neither the license nor a right under the license shall be assigned or otherwise transferred in violation of the provisions of KRS 211.842 to 211.852.

(3) A person licensed by the cabinet under 902 KAR Chapter 100 shall confine his use and possession of the radioactive material(s) licensed to the locations and purposes authorized in the license.

Section 7. Expiration and Termination of Licenses. (1) Except as specified in subsection (9) of this section and in Section 8(2) of this administrative regulation, a specific license shall expire at midnight on the day, in the month and year stated in the license.

(2) A licensee shall notify the cabinet promptly, in writing, and request termination of the license if the licensee decides to terminate activities involving materials authorized under the license. This notification and request for termination of the license shall include:

(a) The reports and information specified in subsection (3)(d) and (e) of this section; and

(b) A plan for completion of decommissioning if required by subsection (4) of this section or by license condition.

(3) If a licensee does not submit an application for license renewal under Section 8(2) of this administrative regulation, the licensee, on or before the expiration date specified in the license, shall:

(a) Terminate use of radioactive material;

(b) Remove radioactive contamination to the extent practicable except for those procedures covered by subsection (4) of this section;

(c) Properly dispose of radioactive material;

(d) File the "Disposition of Radioactive Material", "Form RPS-10", with the Cabinet for Health Services [~~Human Resources~~]. The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday; and

(e) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the result of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate:

1. Report levels of radiation in units of microrads per hour of beta

and gamma radiation at one (1) centimeter and gamma radiation at one (1) meter from surfaces, and report levels of radioactivity, including alpha, in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

2. Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(4) In addition to the information required under paragraphs (d) and (e) of this subsection, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the cabinet and may increase potential health and safety impacts to workers or to the public as in the following cases:

(a) Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

(b) Workers may be entering areas not normally occupied in which surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(c) Procedures would result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) Procedures would result in significantly greater releases of radioactive material to the environment than those associated with operation.

(5) Procedures with potential health and safety impacts shall not be carried out prior to approval of the decommissioning plan.

(6) The proposed decommissioning plan, if required by subsection (4) of this section or by license condition, shall include:

(a) Description of planned decommissioning activities;

(b) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(c) A description of the planned final radiation survey; and

(d) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning; and

(e) A plan for assuring the availability of adequate funds for completion of decommissioning.

(7) The proposed decommissioning plan may be approved by the cabinet if the information in the plan demonstrates that the decommissioning shall be completed as soon as is reasonable and the health and safety of workers and the public shall be adequately protected.

(8) Upon approval of the decommissioning plan by the cabinet, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in subsection (3)(e) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(9) If the information submitted under subsection (3)(e) or (8) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the cabinet shall inform the licensee of appropriate further actions required for termination of license.

(10) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of residual radioactive material present as contamination until the cabinet notifies the licensee in writing that the license shall be terminated. During this time, the licensee shall:

(a) Limit actions involving radioactive material to those related to decommissioning; and

(b) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the cabinet notifies the licensee in writing that the license shall be terminated.

(11) Specific licenses shall be terminated by written notice to the licensee when the cabinet determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(d) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

Section 8. Renewal of License. (1) An application for renewal of specific licenses shall be filed in accordance with 902 KAR Chapter 100.

(2) If a licensee, not less than thirty (30) days prior to expiration of his existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, the existing license shall not expire until the application has been finally determined by the cabinet.

Section 9. Amendment of Licenses. (1) Applications for amendment of a license at the request of the licensee shall be filed in accordance with 902 KAR Chapter 100 and shall specify the respects in which the licensee desires his license to be amended and the grounds for the amendment.

(2) Every five (5) years or at the request of the cabinet, the licensee shall be required to amend the license in its entirety by submitting a complete application.

Section 10. Cabinet Action on Applications to Renew or Amend. In considering an application by a licensee to renew or amend his license, the cabinet shall apply the requirements of 902 KAR Chapter 100.

Section 11. Inalienability of Licenses. A license issued or granted under 902 KAR Chapter 100 or right to possess or utilize radioactive material granted by a license issued under 902 KAR Chapter 100 shall not be transferred, assigned, or otherwise disposed of, through transfer of control of a license to a person unless the cabinet, after securing full information, finds that the transfer is in accordance with the requirements of 902 KAR Chapter 100 and gives its consent in writing.

Section 12. Transfer of Material. (1) A licensee shall not transfer radioactive material except as authorized by this administrative regulation.

(2) Except as stated in the license and subject to the provisions of subsections (3) and (4) of this section, a licensee may transfer radioactive material subject to the acceptance of the transferee to a person:

(a) Exempt from the requirements for a license as specified in this administrative regulation to the extent permitted under the exemption;

(b) Authorized to receive radioactive material under terms of a general license as specified in 902 KAR 100:050, or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. Nuclear Regulatory Commission, or an Agreement State;

(c) Otherwise authorized to receive radioactive material by the federal government or an agency thereof, the cabinet, or an Agreement State; or

(d) As otherwise authorized by the cabinet in writing.

(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S. Nuclear Regulatory Commission, or an Agreement State or to a general licensee who is required to register with the cabinet, U.S. Nuclear Regulatory Commission, or an Agreement State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by this

administrative regulation are acceptable:

(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; if the oral certification is confirmed in writing within ten (10) days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or when a transferor desires to verify that information received by one (1) of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall meet the requirements of 902 KAR Chapter 100.

Section 13. Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of a license shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to or violation of KRS 211.842 to 211.852, 902 KAR Chapter 100, or orders issued by the cabinet.

(2) A license may be revoked, suspended, or modified, in whole or in part, for:

(a) A material false statement in the application or in a statement of fact required under provisions of KRS 211.842 to 211.852;

(b) Conditions revealed by application or statement of fact;

(c) A report, record, or inspection, or other means which would warrant the cabinet to refuse to grant a license on an original application; or

(d) A violation of, or failure to observe the terms and conditions of KRS 211.842 to 211.852, or of the license, or of rules, 902 KAR Chapter 100, or orders of the cabinet.

(3) Except in cases of willful violation or those in which the public health, interest, or safety requires otherwise, a license shall not be modified, suspended, or revoked unless, prior to the institution of proceedings:

(a) Facts or conduct which may warrant this action shall have been called to the attention of the licensee in writing; and

(b) The licensee shall have been accorded an opportunity to demonstrate or achieve compliance with lawful requirements.

(4) A licensee whose license is suspended or revoked, shall have a right to a hearing in a manner set forth in 902 KAR 1:400. ~~[100:170.]~~

Section 14. Retention of Records. (1) A person who receives radioactive material in accordance with a license issued under 902 KAR Chapter 100 shall keep records showing the receipt, transfer, and disposal of radioactive material.

(2)(a) Records of receipt of radioactive material which are required by subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.

(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after the transfer.

(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.

(3) Other records required by 902 KAR Chapter 100 or by a license condition shall be maintained for the period specified in 902 KAR Chapter 100. If the retention period is not specified by 902 KAR Chapter 100 or license condition, the records shall be permanently maintained unless the cabinet authorizes their disposition upon proper application for their destruction.

(4) Records required to be maintained by 902 KAR Chapter 100 may be the original, a reproduced copy or a microform if duly authenticated by authorized personnel and capable of producing a clear and legible copy after storage for the period specified by 902 KAR Chapter 100.

Section 15. Financial Assurance and Recordkeeping for Decommissioning. (1)(a) An applicant for a specific license authorizing the possession and use of unsealed radioactive material, except source material, with a half-life greater than 120 days and in quantities exceeding 10E5 times the applicable quantities set forth in 902 KAR 100:030, Section 1 shall submit a decommissioning funding plan as described in subsection (5) of this section. The decommissioning funding plan shall also be submitted if a combination of isotopes is involved if R divided by 10E5 is greater than one (1) (i.e., unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in 902 KAR 100:030, Section 1.

(b) An applicant for a specific license authorizing the possession and use of more than 100 millicuries of source material in a readily dispersible form shall submit a decommissioning funding plan as described in subsection (5) of this section.

(c) An applicant for a specific license authorizing possession and use of quantities of source material greater than ten (10) millicuries but less than or equal to 100 millicuries in a readily dispersible form shall either:

1. Submit a decommissioning funding plan as described in subsection (5) of this section; or

2. Submit a certification that financial assurance for decommissioning has been provided in the amount of $150,000 using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued but prior to the receipt of radioactive material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section shall be submitted to the cabinet.

(2) An applicant for a specific license authorizing possession and use of radioactive material, except source material and sealed special nuclear material sources, with a half-life greater than 120 days and in quantities specified in subsection (4) of this section shall either:

(a) Submit a decommissioning funding plan as described in subsection (5) of this section; or

(b) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by subsection (4) of this section using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance shall be obtained after the application has been approved and the license issued but prior to the receipt of radioactive material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section shall be submitted to the cabinet.

(3)(a) A holder of a specific license issued on or after January 1, 1995, which is of a type described in subsection (1) or (2) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(b) A holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(a) or (b) of this section shall submit, on or before January 1, 1995, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in an application for amending the license in its entirety.

(c) A holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(c) or (2) of this section shall submit, on or before January 1, 1995, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material:

(a) Greater than 10E4 but less than or equal to 10E5 times the applicable quantities of 902 KAR 100:030, Section 1, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section divided by 10E4 is greater than one (1) but R divided by 10E5 is less than or equal to one (1) - $750,000.

(b) Greater than 10E3 but less than or equal to 10E4 times the applicable quantities of 902 KAR 100:030, Section 1, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10E3 is greater than one (1) but R divided by 10E4 is less than or equal to one (1) - $150,000.

(c) Greater than 10E10 times the applicable quantities of 902 KAR 100:030, Section 1, in sealed sources or plated foils other than sealed special nuclear material sources. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10E10 is greater than one (1) - $75,000.

(5) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from subsection (6) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(6) Financial assurance for decommissioning shall be provided by:

(a) A prepayment deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method.

1. If the licensee defaults, these methods guarantee that decommissioning costs shall be paid.

2. A surety method may be in the form of a surety bond, letter of credit, or line of credit.

3. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Section 16 of this administrative regulation.

4. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section.

5. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are conducted pursuant to Section 17 of this administrative regulation.

6. A guarantee by the applicant or licensee shall not be used in combination with other financial methods to satisfy the requirement of this section, or in a situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

7. Surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

a. The surety method or insurance shall be open-ended or, if written for a specified term, such as five (5) years, shall be renewed automatically unless ninety (90) days or more prior to the renewal date, the issuer notifies the cabinet, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the cabinet within thirty (30) days after receipt of notification of cancellation.

b. The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

c. The surety method or insurance shall remain in effect until the cabinet has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund.

1. An external sinking fund shall be a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds shall be sufficient to pay decommissioning costs at the time termination of operation is expected.

2. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

3. The surety or insurance provisions shall be as stated in paragraph (b) of this subsection.

(d) In the case of a state, or local government licensee, a statement of intent containing a cost estimate for decommissioning or an amount based on the table in subsection (4) of this section, and indicating that funds for decommissioning shall be obtained when necessary.

(7) A person licensed under this administrative regulation shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the cabinet. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the cabinet considers important to decommissioning consists of:

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after cleanup procedures or if there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials like concrete. These records shall include known information on identification of involved nuclides, quantities, forms and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, relevant documents need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) A list of the following, contained in a single document and updated every two (2) years, except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having half-lives of less than sixty-five (65) days:

1. Areas designated and formerly designated restricted areas as defined in 902 KAR 100:010, Section 1(196). For requirements prior to January 26, 1994, see 902 KAR 100:010, Section 1(110) contained in the 1990 edition of 902 KAR Chapter 100 of the Kentucky Administrative Regulations, June 27, 1990;

2. Areas outside of restricted areas that require documentation pursuant to paragraph (a) of this subsection;

3. Areas outside of restricted areas where current and previous wastes have been buried as documented under 902 KAR 100:021, Section 11;

4. Areas outside of restricted areas which contain radioactive material so that, if the license expired, the licensee shall be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 902 KAR 100:021, Section 2.

(d) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Section 16. Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds shall be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This section establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(1) Financial test. To pass the financial test, the parent company shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The parent company shall have:

1. Two (2) of the following three (3) ratios: A ratio of total liabilities to net worth less than two (2.0); a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1); and a ratio of current assets to current liabilities greater than one and one-half (1.5); and

2. Net working capital and tangible net worth at least six (6) times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(b) The parent company shall have:

1. A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(c) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure the licensee shall inform the cabinet within ninety (90) days of matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(d)1. After the initial financial test, the parent company shall repeat the passage of the test within ninety (90) days after the close of each succeeding fiscal year.

2. If the parent company no longer meets the requirements of paragraphs (a) and (b) of this subsection, the licensee shall send notice to the cabinet of intent to establish alternate financial assurance as specified in this administrative regulation. The notice shall be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of that fiscal year.

(2) Parent company guarantee. The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(a) The parent company guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the cabinet. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both licensee and the cabinet as evidenced by the return receipts.

(b) If the licensee fails to provide alternate financial assurance as specified in this administrative regulation within ninety (90) days after receipt by the licensee and the cabinet of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor shall provide alternative financial assurance in the name of the licensee.

(c) The parent company guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license.

(d) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Section 17. Criteria Relating to Use of Financial Test and Self-guarantees for Providing Reasonable Assurance of Funds for Decommissioning. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of subsection (4) of this section.

(2) The terms of self-guarantee are in subsection (7) of this section.

(3) This section establishes criteria for passing the financial test for the self-guarantee and establishes the terms for self-guarantee.

(4) To pass the financial test, a company shall meet the following criteria:

(a) Tangible net worth at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used, for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(b) Assets located in the Unites States amounting to at least ninety (90) percent of total assets or at least ten (10) times the total current decommissioning cost estimate, or the current amount required if certification is used, for decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(c) A current rating for its most recent bond issuance of AAA, AA or A as issued by the Standard and Poors, or Aaa, Aa, or A as issued by Moodys.

(5) To pass the financial test, a company shall meet the following additional criteria:

(a) The company has at least one (1) class of equity securities registered under the Securities Exchange Act of 1934;

(b) The company's independent certified public accountant has compared the data used by the company in the financial test which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in the financial statement;

(c) In connection with the procedure in subsection (5)(b) of this section, the licensee provides the cabinet within ninety (90) days of matters coming to the attention of the auditor that cause the auditor to believe:

1. The data specified in the financial test needs to be adjusted;

and

2. The company no longer passes the test; and

(d) After the initial financial test, the company repeats passage of the test within ninety (90) days after the close of each succeeding fiscal year.

(6) If the licensee no longer meets the requirements of subsection (4) of this section, the licensee shall provide immediate notice to the cabinet of its intent to establish alternate financial assurance as specified this administrative regulation within 120 days of the notice.

(7) The terms of self-guarantee which an applicant or licensee furnishes shall provide that:

(a) The guarantee remains in effect unless the licensee provides notices of cancellation by certified mail to the Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky 40621. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the cabinet, as evidenced by the return receipt;

(b) Alternative financial assurance as specified in this administrative regulation shall be provided within ninety (90) days following receipt by the cabinet of notice of cancellation of the guarantee;

(c) The guarantee and financial test provisions remain in effect until the cabinet has terminated the license or until another financial assurance method acceptable to the cabinet has been put in effect by the licensee.

(d) The licensee promptly forwards to the cabinet and the licensee's independent auditor reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of Section 13 of the Security and Exchange Act of 1934;

(e) If the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of the fact to the cabinet within twenty (20) days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of subsection (4) of this section; and

(f) The applicant or licensee shall provide to the cabinet a written guarantee, a written commitment by a corporate officer, which states the licensee shall fund and carry out the required decommissioning activities or, upon issuance of an order by the cabinet, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

Section 18. Reporting Requirements. (1) Immediate report. A licensee shall directly notify the Cabinet for Health Services [~~Human Resources~~], Radiation Control Branch as soon as possible but not later than four (4) hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposure to radiation or radioactive materials or releases of radioactive materials that could exceed regulatory limits. These events may include fires, explosions, toxic gas release.

(2) Twenty-four (24) hour report. A licensee shall notify the Cabinet for Health Services [~~Human Resources~~], Radiation Control Branch within twenty-four (24) hours after the discovery of the following events involving radioactive material:

(a) An unplanned contamination event that:

1. Requires access to the contaminated area, by workers or the public, to be restricted for more than twenty-four (24) hours by imposing additional radiological controls or by prohibiting entry into the area;

2. Involves a quantity of material greater than five (5) times the lowest annual limit on intake specified in 902 KAR 100:019, Section 44 for the material; and

3. Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than twenty-four (24) hours to decay prior to decontamination.

(b) An event in which equipment is disabled or fails to function as designed if:

1. The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive material exceeding regulatory limits, or to mitigate the consequences of an accident;

2. The equipment is required to be available and operable when it is disabled or fails to function; and

3. Redundant equipment is not available and operable to perform the required safety function.

(c) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(d) An unplanned fire or explosion damaging radioactive material or a device, container, or equipment containing radioactive material if:

1. The quantity of material involved is greater than five (5) times the lowest annual limit on intake specified in 902 KAR 100:019, Section 44 for the radioactive material; and

2. The damage affects the integrity of the radioactive material or its container.

(3) Reports by licensees in response to the requirements of this section shall be made as follows:

(a) Licensees shall be required to make reports by subsections (1) and (2) of this section by telephone to the Cabinet for Health Services [~~Human Resources~~], Radiation Control Branch at (502) 564-3700 from 8 a.m.-4:30 p.m. Monday through Friday and at (502) 564-8715 at other hours. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

1. The caller's name and call back telephone number;

2. A description of the event, including date and time;

3. The exact location of the event;

4. The isotopes, quantities, and chemical and physical form of the radioactive material involved; and

5. Available personnel radiation exposure data.

(b) A licensee who makes a report required by subsections (1) and (2) of the section shall submit a written follow-up report within thirty (30) days of the initial report. Written reports prepared pursuant to 902 KAR Chapter 100 may be submitted to fulfill this requirement if the reports contain the necessary information and the appropriate distribution is made. These written reports shall be sent to the Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky, 40621. The report shall include the following:

1. A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

2. The exact location of the event;

3. The isotopes, quantities, and chemical and physical form of the radioactive material involved;

4. Date and time of the event;

5. Corrective actions taken or planned and results of evaluations or assessments; and

6. The extent of exposures of individuals to radiation or to radioactive materials without identification of individuals by name.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 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 June 16, 1996 five days prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing

is opened 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 administration regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: 400 radioactive material licensees, and other persons who handle radioactive material will be impacted by change in administrative hearings under KRS Chapter 13B.

(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: 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 comments received: No public hearing was requested and no comments were received.

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

1. First year: If a licensee has a license suspended or revoked, the licensee will be required to file for an administrative hearing under KRS Chapter 13B.

2. Second and subsequent years: If a licensee has a license suspended or revoked, this amendment will require the filing for an administrative hearing under KRS Chapter 13B.

(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 administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Administrative hearing under KRS Chapter 13B will mandate the paperwork requirements under the present amendments.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from the licensing of radioactive material users.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Amendment was mandated under 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: The benefit is a uniform mechanism for licenses to address administrative hearings, if a license is suspended or revoked.

(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: Without enforcement regulations the cabinet could not deny, revoke, or suspend a license for regulatory violations and thus health and safety could be threatened.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations.

(a) Necessity of 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, all licensees will be required to file for administrative hearings under KRS Chapter 13B.

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 affect.

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? Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 CFR 30, 34, 39, and 40 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. Amendment relates to administrative hearings under KRS Chapter 13B. Administrative regulation provides requirements for radiological incidents notifications and a method to provide reasonable assurance of funding for decommissioning and decontamination.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH SERVICES
Department for Health Services
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 100:170. Proceedings.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.844, EO 95-79

NECESSITY AND FUNCTION: Executive Order 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. The Cabinet for Health Services [~~Human Resources~~] is authorized by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide for the conduct of proceedings before the cabinet involving the possession, use, and transfer of radioactive materials and radiation producing machines.

Section 1. Applicability. The provisions of this administrative regulation shall apply to administrative proceedings involving the use, possession or transfer of radioactive materials or radiation producing machines within Kentucky.

Section 2. Administrative Examination of License Applications. Applications for the issuance of a license, amendment of a license at the request of the holder, transfer of a license and renewal of a license shall be reviewed by the cabinet. The applicant may be required to submit additional information and may be requested to confer informally regarding the application. The cabinet shall give to others notice of the filing of applications as is required under the applicable provisions of these administrative regulations and additional notices as it deems appropriate.

Section 3. Action on License Applications, Hearings. (1) The cabinet shall, upon request of the applicant or intervenor, and may upon its own initiative, direct the holding of a formal hearing prior to taking action on the application. If no prior formal hearing has been held and no notice of proposed action has been served as provided in subsection (2) of this section, the cabinet shall direct the holding of a formal hearing upon receipt of a request therefor from the applicant or intervenor within thirty (30) days after the issuance of a license or other approval or a notice of denial.

(2) In cases it deems appropriate, the cabinet may cause to be served upon the applicant a notice of proposed action upon his application and shall cause copies thereof to be serviced upon intervenors or others entitled to or requesting notification. The notice shall state the terms of the proposed action. If a formal hearing has not been held prior to the issuance of the notice, the cabinet shall direct the holding of a formal hearing upon the request of the applicant or an intervenor received within fifteen (15) days following the service of the notice.

Section 4. Effect of Timely License Renewal Applications. If at least thirty (30) days prior to the expiration of an existing license authorizing activity of a continuing nature, a licensee files an application for a renewal or for a new license for the activity so authorized, the existing license shall not be deemed to have expired until the application has been finally determined.

Section 5. Notice of Violation. (1) Prior to the institution of proceedings for alleged violation of provisions of these administrative regulations, the Act, or the conditions or terms of a license or registration, the licensee, registrant, or other person as appropriate shall be served with a written notice of violation, except as specified in subsection (2) of this section. The notice of violation shall state the alleged violation and shall require that the licensee submit, within fifteen (15) days of the date of the receipt of the notice or other time as specified in the notice, a written explanation or statement in reply including:

(a) Corrective steps which have been taken by the licensee or registrant and the results achieved;

(b) Corrective steps to be taken;

(c) The date when correction and compliance will be achieved; and

(d) An admission or denial of the violation and the reason(s) for the violation(s) if admitted and required in the notice.

(2) If in the opinion of the cabinet the public health, interest, or safety so requires, or the violation is willful, the notice provided in this section may be omitted.

Section 6. Failure to Respond to Notice of Informal Hearing. (1) In the event the person to whom the notice of violation has been issued fails to respond within the prescribed time, the Secretary for Human Resources, or his designee, may set the matter down for an informal hearing as described in Section 20 of this administrative regulation.

(2) Failure of the person to whom the notice was sent to appear at the informal hearing may result in:

(a) The registration or license of the person being modified, suspended or revoked;

(b) The recapture, quarantine or seizure of the radiation source;

(c) The inactivation of radiation producing machines; or

(d) Other appropriate action deemed necessary by the cabinet to protect public health and safety.

(3) Any person aggrieved by the action of the cabinet under this section may, within thirty (30) days after receipt of notice of the action, request a formal hearing before the secretary or his designee.

Section 7. Notices and Orders. In a case described in Section 5 of this administrative regulation, the cabinet may issue the licensee, registrant, or other person as appropriate a notice to comply with the administrative rules and administrative regulations of the cabinet or an order issued by the cabinet. The terms of the notice or order may be effective immediately or at a time specified in the notice or order. The notice or order shall apprise the licensee or registrant that he has the right to request a hearing within thirty (30) days by making a written request therefor to the cabinet. In the event a request for a hearing is received by the cabinet within the time specified, a notice of hearing shall be issued by the cabinet in accordance with Section 5 of this administrative regulation.

Section 8. Emergency Notices and Orders. If the cabinet finds that a condition exists requiring immediate action to protect the public health or welfare, the cabinet may issue a notice or an order reciting the existence of the condition and requiring that action be taken as is deemed necessary by the cabinet to protect the public health and welfare. The notice or order may be issued by the Manager, Radiation Control, on behalf of the cabinet. The notice or order shall be effective immediately. Persons to whom a notice or an order is directed shall comply therewith immediately, but applicants for hearings to the cabinet shall be afforded a hearing in accordance with 902 KAR 1:400. On the basis of a hearing, the cabinet shall continue, revoke, or modify a notice or order.

Section 9. Enforcement of Obedience to Orders. If the failure on the part of a person to comply with a lawful order of the cabinet or with process or if the refusal of a witness to testify concerning a matter on which he may be lawfully interrogated, the circuit court or a judge thereof having jurisdiction may, on application of the cabinet, compel obedience by proceedings as in contempt cases as provided by KRS 211.230.

Section 10. Recapture, Quarantine, or Seizure of Sources of Radiation. If a case of extreme importance to the health and safety of the public, the cabinet may, without prior notice of hearing, recapture, quarantine, or seize a source of radiation, if as promptly as possible and not later than ten (10) days from the recapture, quarantine, or seizure, the cabinet shall serve upon the person from whom the sources were recaptured, quarantined, or seized an appropriate order depriving that person of possession or use of the sources together with a notice which shall give that person the right to request a hearing, concerning the order depriving him of the use of the sources and the restoration of the sources to him pursuant to 902 KAR 1:400.

Section 11. Filing Papers. Unless otherwise specified, papers required to be filed with the cabinet shall be filed with the Manager, Radiation Control, Cabinet for Health Services [~~Human Resources~~], 275 East Main Street, Frankfort, Kentucky 40621. Papers required to be filed with the cabinet shall be deemed filed upon actual receipt by the cabinet at the place specified accompanied by proof of service upon the parties required to be served as described in Section 14 of

this administrative regulation. Unless otherwise specified, the filing if by mail or telegram shall upon actual receipt be deemed complete as of the date of deposit in the mail or with the telegraph company. Papers may be filed in person at the cabinet's offices, 275 East Main Street, Frankfort, Kentucky 40621.

Section 12. Computation of Time. In computing a period of time prescribed or allowed by an applicable rule or administrative regulation, notice or order, the provisions of KRS 446.030 shall apply.

Section 13. Extension of Time. (1) Extensions of time for filing or performing an act required or allowed to be done, and continuances of a proceeding or hearing, may be granted in the discretion of the cabinet upon application and good cause shown by a party, or upon the initiative of the cabinet or stipulation of the parties.

(2) If a hearing officer has been designated for hearing, the discretion in granting extensions of time and continuances in matters relating to the hearing shall rest with the hearing officer in accordance with KRS Chapter 13B.

Section 14. [~~Subpoenas, Service and Papers. Pursuant to the powers conferred by KRS 211.220, the cabinet may issue subpoenas, subpoenas of records and documents, and all necessary process in proceedings brought before or initiated by the cabinet and the process shall extend to all parts of the Commonwealth. Service of process and proof of service may be made, as specified by KRS 211.220.~~

~~Section 15. Representation. (1) Except as specified in subsection (2) of this section, a person appearing before the cabinet may do so in person or by a representative. A person transacting business with the cabinet in a representative capacity may be required to show his authority to act in that capacity.~~

~~(2) In a formal hearing, a person may appear in person or be represented by his attorney.~~

~~Section 16.~~] Intervention. (1) A person whose interests may be affected by a proceeding may file a petition to intervene pursuant to KRS 13B.060. [~~describing his interests, how it may be affected by cabinet action, and the position he is taking in the matter. Service of copies of the motion shall be made upon all parties to the proceeding. The licensee, applicant or registrant upon notice and motion, and other parties by leave, may contest the right of the petitioner to intervene.~~

~~(2) As soon as is practicable after filing of a motion for intervention and a hearing of argument, the cabinet or a hearing officer shall issue and serve an order either permitting or denying intervention. If the order is a denial of intervention, it shall contain a statement of the grounds. An order permitting intervention may be conditioned upon terms as the cabinet or hearing officer may direct.~~

~~Section 17. Effect of Intervention of Denial Thereof. A person permitted to intervene becomes a party to the proceeding:~~

~~(1) If a notice of hearing has been issued or a hearing has begun, the admission thereafter of an intervenor shall not of itself enlarge or alter the issues without amendment as specified in subsection (3) of this section.~~

~~(2) An order denying intervention shall be without prejudice to a proposed limited appearance by the petitioner as one who is not a party for the purposes specified in Section 20 of this administrative regulation.~~

~~(3) At a time prior to the time fixed for hearing but not later than five (5) days prior, the party concerned may amend the same by filing an amendment and serving it upon the parties. At a time thereafter, amendments may be permitted in the discretion of the hearing officer upon terms as he shall prescribe.~~

~~Section 18. Consolidation. Upon motion and good cause shown or upon its own initiative the cabinet or hearing officer may consolidate two (2) or more proceedings.~~

~~Section 19. Authority to Administer Oaths. An oath or affirmation required by or pursuant to the provisions of these administrative regulations may be administered by a person authorized to administer oaths by the laws of the Commonwealth of Kentucky.~~]

Section 15. [~~20.~~] Informal Hearing Procedure. The procedure to be followed in informal hearings shall be as best serve the purpose of the hearing. An informal hearing may consist of the submission of written data, views, or arguments with or without oral argument, or may partake of the nature of a conference or may assume some of the aspects of a formal hearing in which the subpoena of witnesses and the production of evidence may be permitted or directed.

Section 16. Administrative [~~21. Formal~~] Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [~~The parties to a formal hearing shall be the cabinet, the licensee, applicant or registrant as the case may be, and persons permitted to intervene.~~

~~Section 22. Limited Appearances by Persons not Parties. With the consent of the hearing officer, limited appearances may be entered without request for or grant of permission to intervene by persons who are not parties to a hearing. With the consent of the hearing officer, and on due notice to the parties, persons may make oral or written statements of their position on the issues involved in the proceeding, but may not otherwise participate in the hearing.~~

~~Section 23. Designation of Hearing Officer. The hearings herein described may be conducted by the cabinet or the secretary of the department may designate hearing officers who shall have the power and authority to conduct hearings in the name of the cabinet.~~

~~Section 24. Function of Hearing Officer. The function of the hearing officer is to schedule and conduct hearings on behalf and in the name of the cabinet on matters referred for hearing by the cabinet. It is the duty of the hearing officer to prepare and furnish to the cabinet for decision a complete written transcript of the record of the hearing which contains evidence introduced at the hearing and pleas, motions, objections and rulings of the hearing officer.~~

~~Section 25. Notice of Hearing. The cabinet shall give timely notice of hearings to affected parties and to other persons, entitled to notice. This notice shall state the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the matters of fact and law asserted or to be considered and a request for an answer. The time and place for hearing shall be fixed with due regard for the convenience and necessity of the parties or their representatives.~~]

Section 17. [~~26.~~] Answer. (1) Within the time allowed by the notice of hearing for filing and serving an answer, the answer of a licensee, applicant or registrant shall fully advise the cabinet and other parties of the nature of the defense or other position of the answering party, the issues he proposes to argue and those he does not argue, and whether or not he proposes to appear and present evidence. If facts are alleged, the answer shall admit or deny specifically each allegation of fact; or if knowledge is lacking, the answer may so state and the statement shall serve as a denial. Allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be argued . The answer of an intervenor shall fully advise the cabinet and other parties of his position and whether he proposes to appear and present evidence.

(2) If a party does not oppose an order or proposed action of the cabinet embodied in or accompanying the notice of hearing or does not wish to appear and give evidence at the hearing, the answer shall so state. In lieu of appearing, the party may, if he chooses, submit a statement of reasons why the proposed order or sanction shall not be issued or shall be different than proposed, and the cabinet shall attribute weight as it deems deserving to the written reasons.

Section 18. [~~27.~~] Reply. In appropriate cases the cabinet may file and serve a reply to the answer or, if the answer affects other parties to the proceeding, the cabinet or the hearing officer may permit these parties to file and serve a reply.

~~[Section 28. Default. Failure of a party to file and serve an answer within the time specified in the notice of hearing or as prescribed herein or to appear at a hearing, shall be deemed to authorize the cabinet in its discretion, as to the party:~~

~~(1) To find the facts alleged to be true and to enter findings or order as may be appropriate, without further notice or hearing; or~~

~~(2) To proceed to take proof, without further notice, on the allegations or issues set forth in the specifications of issues.]~~

Section 19. [~~29.~~] Admissions. After an answer has been filed; a party may file and serve upon the opposing side a written request for the admission of the genuineness and authenticity of relevant documents described in or attached to the request or for the admission of the truth of relevant matters of fact stated in the request. Each matter for which an admission is requested shall be deemed admitted unless within the time designated in the request, but not less than ten (10) days after service thereof or further time as the hearing officer may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying the matters upon which the admission is requested or setting up the reasons why he cannot truthfully admit or deny the matters.

~~[Section 30. Prehearing Conferences. (1) In order to provide opportunity for the settlement of a proceeding or of the issues therein, or for agreement upon procedural and other matters, there may be held at a time prior to or during a hearing, upon due notice of the time and place given to affected parties, conferences of the parties as, in the discretion of the hearing officer, time, the nature of the proceeding, and the public interest may permit.~~

~~(2) Action taken at a prehearing conference may be recorded for appropriate use at the hearing in the form of a written stipulation among the parties reciting the matters upon which there has been an agreement. The stipulation shall be binding upon the parties thereto.~~

~~Section 31. Public Hearings. Formal hearings shall be public except those involving restricted data.~~

~~Section 32. Evidence in Formal Hearings. (1) Every party to the hearing shall have the right to present oral or documentary evidence and rebuttal evidence and conduct cross examination as may be required for a full and true disclosure of the facts. The parties shall be encouraged to present evidence in written form.~~

~~(2) The hearing officer shall exclude all irrelevant, immaterial, or unduly repetitious evidence.~~

~~(3) Objections to the admission or exclusion of evidence shall state the grounds of objections. The transcript shall include the objections, the grounds and the rulings, but not the argument of the grounds unless ordered by the hearing officer.~~

~~(4) Offers of proof made in connection with an objection taken to the ruling of the hearing officer, excluding or rejecting offered oral testimony, shall consist of a statement of the substance of the evidence which the party contends would be adduced by the testimony. If the excluded material is documentary or written, a copy of the material shall be marked for identification and shall constitute the offer of proof.~~

~~(5) An official record of a governmental agency or an entry in this record, if admissible, may be evidenced by an official publication thereof or by a copy attested as a true copy by the officer having legal custody of the record, or by his deputy, and accompanied by a certificate that the officer has the custody.~~

~~Section 33. Briefs. Briefs may be filed within ten (10) days after the close of the hearing except that the hearing officer may upon written application grant an additional period of time not in excess of sixty (60) days within which briefs may be filed.~~

~~Section 34. Findings and Order. If a hearing is granted or ordered by the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Health Services shall, after reviewing the entire record of the hearing, make his findings and enter his order. The findings and order shall be in writing and shall contain a statement of findings and conclusions upon all material issues of fact and law and shall be signed by the Commissioner for Health Services of the cabinet. The originals shall be filed as a part of the record of the case which shall be retained in the custody of the Commissioner for Health Services unless an appeal is taken therefrom and one (1) certified copy of the findings and order shall be served on all parties to the proceeding.~~

~~Section 35. Appeals From Decisions of the Commissioner. A person who is aggrieved by a ruling, decision or action of the Commissioner for Health Services may appeal to the Secretary of the Cabinet for Human Resources within thirty (30) days after service of the ruling, decision or action by filing with the secretary a written complaint setting out the ruling, decision or action complained of, the reasons that the person is aggrieved and the relief sought by the person as described in KRS 211.260 and 211.090. A copy of the complaint shall also be served by the appealing party upon other parties in interest. No new evidence shall be introduced and the appeal shall be tried upon the record prepared by the cabinet or hearing officer. Additional briefs and oral arguments may be granted by the secretary. The secretary may affirm the findings and order of the Commissioner for Health Services, or may reverse, modify or remand the case for further proceedings. Copies of the secretary's order shall be served upon the parties in interest.]~~

Section 20. [~~36.~~] Waiver of Procedures. The parties to a hearing may agree to waive one (1) or more of the procedural steps which would otherwise precede the reaching of a final decision by the cabinet.

Section 21. [~~37.~~] Public Records: Exceptions. Except as specified in this section records shall be deemed public records and shall be open to inspection by the public. The following are not to be considered public records which are available for public inspection:

(1) Documents relating to personnel matters and medical and other personnel information, which, under general governmental personnel practices, are not normally made public.

(2) Intra-agency and interagency communications including memoranda reports, correspondence, and staff papers prepared cabinet personnel, or by other government agency for use within the cabinet or within the executive branch of the government.

(3) Documents classified as restricted data under the Atomic Energy Act of 1954 or classified under Executive Order of the President of the United States as restricted data.

(4) Correspondence received in confidence by the cabinet relating to an alleged or possible violation of a statute, rule, administrative regulation, order, license or permit.

(5) Other documents involving matters of internal cabinet management.

(6) Other matters required by law to be kept confidential or not

available to public inspection.

(7) Names of individuals who have received exposures to radiation.

(8) The cabinet may withhold documents or parts thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. This withholding from public inspection shall not, however, affect the right of persons properly and directly concerned to inspect the document. Persons requesting that documents or information therein be withheld from public disclosure shall make prompt application identifying the material and giving the reasons. If the applicant is responsible for the preparation of the document. he shall insofar as is possible segregate in separate paper the information for which the special treatment is requested. The cabinet may honor the request upon a finding that public inspection is not required in the public interest and would adversely affect the interest of the persons concerned. If the request is denied, the applicant shall be notified thereof with a statement of the reasons.

Section 22. [~~38.~~] Hearings: Formal and Informal. (1) Formal hearings shall be held adjudication of rights.

(2) Informal hearings shall normally be held for the purpose of obtaining necessary or useful information, including but not limited to cases as described in Section 6 of this administrative regulation.

RICE C. LEACH, MD, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 9, 1996

FILED WITH LRC: May 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for June 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 June 16, 1996 five days prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is opened 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 administration regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Acting General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: 400 radioactive material licensees, and other persons who handle radioactive material will be impacted by change in administrative hearings under KRS Chapter 13B.

(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: 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 comments received: No public hearing was requested and no comments were received.

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

1. First year: If a licensee has a license suspended or revoked, the licensee will be required to file for an administrative hearing under KRS Chapter 13B.

2. Second and subsequent years: If a licensee has a license suspended or revoked, this amendment will require the filing for an administrative hearing under KRS Chapter 13B.

(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 administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Proceedings would require documentation by the cabinet, hearing officer and the regulated individual.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from the licensing of radioactive material users.

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

(a) Geographical Area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Amendment was mandated under 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: The benefit is a uniform mechanism for the Cabinet and licensees to address radiological issues related to compliance with 902 KAR 100. This would provide ample opportunity for the regulated community to address issues of noncompliance and administrative hearings under KRS Chapter 13B.

(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: Allows licensees to have an opportunity to address violations through the use of administrative hearings under KRS Chapter 13B. Without enforcement regulations the cabinet could not deny, revoke, or suspend a license for regulatory violations and thus health and safety could be threatened. Detrimental effects could be the improper use of radioactive materials resulting in the unjustified exposure to ionizing radiation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations.

(a) Necessity of 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: All administrative hearings must be conducted under the requirements of KRS Chapter 13B. All handling, use, possession and disposal of radioactive materials must be conducted to protect health and safety and ensure the beneficial use of radiation.

FISCAL NOTE ON LOCAL GOVERNMENT

Agency Contact: John A. Volpe, Ph.D.

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 affect.

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? Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities, or requirements. Not applicable.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

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

RELATES TO: KRS 205.710 to 205.800, 403.210 - 403.240, 405.520, 45 CFR 302.50, 302.56, 303.4, 303.6, 303.8, 303.31

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 205.710 - 205.800, 405.520, EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Families and Children [~~Human Resources~~] shall administer the Child Support Enforcement Program (CSEP) in accordance with the provisions of KRS 205.710 to 205.800. 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. This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established:

(a) By a court of competent jurisdiction; or

(b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4)(a) of this administrative regulation; or

(b) The amount determined by the child support guideline contained in KRS 403.212, as computed on Form CS-71, Commonwealth of Kentucky Worksheet, for a child support obligation administratively established by child support agency staff.

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For all public assistance cases referred to the child support agency, or for those nonpublic assistance cases for which child support services are being provided, the agency shall use state statute and legal process in establishing a child support and medical support obligation, including KRS 454.200.

(5) In addition to the deductions as specified in KRS 403.212(2), an administratively or judicially imputed child support obligation shall be determined by:

(a) 100 percent of the income of the parent with whom the child resides, when:

1. There is no support order; or

2. There is a support order but there is no support obligation worksheet; or

3. A worksheet cannot be obtained; or

(b) That parent's portion of the total support obligation as indicated on the worksheet, when:

1. There is a support order; and

2. A copy of the child support obligation worksheet can be obtained.

(6) Within ninety (90) calendar days of locating an absent parent or of establishing paternity, the child support agency shall establish an order for support or document unsuccessful attempts to serve process.

(7) If a court or administrative authority dismisses a petition for support without prejudice, the agency shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support and medical support obligation when:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The parent resides or is employed in Kentucky; and

(d) The absent parent's address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the Kentucky child support guideline as contained in KRS 403.212.

(3) To gather necessary information for administrative establishment, the cabinet shall:

(a) Send to the parental client:

1. A financial questionnaire;

2. A child care expense questionnaire; and

3. A medical support verification request.

(b) Send to the nonparental client:

1. A nonparental client information request; and

2. A medical support verification request, if appropriate.

(c) Send to the absent parent:

1. An appointment letter;

2. A financial questionnaire;

3. A child care expense questionnaire; and

4. A medical support verification request.

(d) Send to the employer of the parental client or the absent parent, or both if both are employed, a wage information request.

(4) In a default case, the cabinet shall set the obligation based on the AFDC standard of need for the child or children as specified in 904 KAR 2:016, Section 7(2).

(5) The child support obligation may be retroactively modified upward, without a showing of change in circumstance, if, within two (2) years of the establishment of the order, evidence of gross income is presented which would have established a higher amount of child support pursuant to the child support guideline.

(6) After the monthly support obligation has been determined, the cabinet shall serve the notice of monthly support obligation upon the absent parent in accordance with KRS 405.440.

(7) In accordance with KRS 405.430(2), the cabinet may modify the monthly support obligation established by the cabinet.

(8) The cabinet shall not administratively modify any obligation which was established by a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) The child support agency shall have a written and publicly available review and adjustment plan for child support orders.

(2) The child support agency shall review all public assistance cases which are thirty six (36) months old or older. Subsequent reviews shall occur at thirty six (36) month intervals based on the date:

(a) The order was adjudicated;

(b) It was determined the order should not be adjusted; or

(c) Upon which the post review challenge period ended.

(3) All public assistance and nonpublic assistance cases shall be reviewed at the request of either parent or any other person or entity that may have standing to request a modification subject to the child support order.

(4) The child support agency shall notify each parent subject to an order of the right to request a review.

(5) Within fifteen (15) calendar days of receipt of a review request, the child support agency must determine if a review shall be conducted.

(6) The child support agency shall notify each parent subject to a child support or medical support order of the review thirty (30) days prior to the review commencement.

(7) Within 180 days of determining that a review should be conducted, or of locating the nonrequesting parent, the child support agency shall:

(a) Send a notice to each parent that a review will be conducted;

(b) Conduct the review;

(c) Send a notice of the result; and

(d) Modify the order or determine that there will be no change.

Section 4. Appeal Procedures. (1) A parent, or any other person or entity that has standing or his authorized representative may request and be granted relief by a dispute hearing in accordance with KRS Chapter 13B. [~~a dispute hearing in accordance with KRS 405.440 and 405.450.~~]

(2) A request shall be made to the child support agency:

(a) In writing;

(b) In person; or

(c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.

(3) The written request for a dispute hearing shall be considered timely if:

(a) Made within twenty (20) days of receipt of an initial notice of monthly support obligation;

(b) Made within twenty (20) days after the parent is notified that the initial support obligation will be upheld; or

(c) Made after thirty (30) days but before fifty (50) days have passed since the parent requested a dispute hearing, but the cabinet has not acted upon the request.

(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. Good cause reasons shall include:

(a) A parent being away from home during the entire filing period;

(b) The parent's inability to read the notice of monthly support obligation; or

(c) The parent's incapacity due to a serious illness during the entire filing period.

(5) The parent or any other person or entity having standing to request modification or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).

(7) If the objection is being filed on a proposed modification of an existing obligation, or a decision that the existing obligation should not be changed, the amount on the prior notice is enforceable and that amount shall be paid while the hearing is pending.

(a) If the parent or any other person or entity having standing to request a modification, or his authorized representative prevails, the cabinet shall promptly return to the obligor any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation amount will be retroactive to the effective date on the notice of monthly support obligation.

(8) The parent or any other person or entity having standing to request a modification, or his authorized representative may withdraw the hearing request by writing to the area child support office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(9) If the parent or any other person or entity having standing to request modification, or his authorized representative fails to appear at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.

(a) The parent or any other person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.

(b) If the parent or any other person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

Section 5. Material Incorporated by Reference. (1) Forms necessary for the establishment, review, and modification of child support orders, medical support orders, or both, provided through the Division of Child Support Enforcement are incorporated effective March 15, 1995. These forms are:

(a) CS-66, revised 7/94; and

(b) CS-71, revised 7/94; and

(c) CS-72, revised 6/89.

(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 CLAYTON, Commissioner
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: April 29, 1996

FILED WITH LRC: May 9, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 16, 1996 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, Acting 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: This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders and the utilization of the developed child support guideline form. This form and instructions will affect any child support case determined since July 15, 1994. An accurate number of those cases affected is not available at this time. However, one of every three dissolution of marriage actions affects families with children. This number excludes paternity and child support orders out of wedlock.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented to the extent available from public comments received. No public hearing was held and no public comments were received.

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

1. First year following implementation: No increase in paperwork will be realized by child support offices, or legal representatives. No additional costs should be incurred by the clients.

2. Second and subsequent years: No increase in paperwork will be realized by child support offices or legal representatives. No additional costs should be incurred by the clients.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No increase in paperwork will be realized by child support offices or legal representatives.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funding - 66%; agency funding - 34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Regulatory amendments were developed in order to harmonize with statutory language at 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: It is anticipated that appeal processes will be more clearly defined.

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides requirements of the child support agency in the establishment and modification of child support orders, medical support orders, and further defines appeal processes in accordance with KRS Chapter 13B.

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? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains services and requirements of the contracting officials, and therefore does affect local governments by requiring additional administrative work in establishments of child support and medical support orders. However, the amendment to harmonize with KRS Chapter 13B does not impose additional administrative duties.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the establishment of child support and medical support orders for the child support enforcement program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide for additional establishment of child support and medical support orders.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(Amendment)

907 KAR 1:060. Medical transportation.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 205, 42 CFR 440.170, 42 USC 1396(d), EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medical Assistance~~]. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to the service of transportation for access to medical services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program in behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Household" means a single housing unit which is legally considered the residence of one (1) or more persons who may or may not be related. An apartment building, duplex, four-plex, etc. shall not be considered a single housing unit.

(2) "Medical necessity" means a condition requiring medical attention.

(3) "Medical service area" means a county of residence and contiguous counties.

Section 2. Transportation under the Medicaid Program shall be provided only to Medicaid eligible recipients and if necessary, an attendant or parent to accompany the recipient.

Section 3. Ambulance Services. Ambulance services shall be provided only if medically necessary [~~when other means of transportation is contraindicated,~~] and if the [~~following~~] criteria shown in this

section are met. [:]

(1) Emergency ambulance services shall be provided without preauthorization to and from the nearest hospital emergency room or appropriate medical facility or provider as defined in 907 KAR 1:061 and specified in the incorporated Medical Transportation Services Manual. A statement that the Medicaid recipient received emergency services shall be obtained from the medical personnel of the facility which treated the recipient. [~~may be provided without preauthorization when the emergency treatment is indicated and rendered.~~

~~(2) Nonemergency ambulance services designed to facilitate the orderly admittance, transfer or placement of the patient shall be permitted without preauthorization when the place of destination, point of departure, and purpose of transfer meet guidelines specified by the agency.~~]

(2) [~~(3)~~] Nonemergency ambulance services [~~for round trips~~] to a hospital, [~~or a~~] clinic, physician's office or other health facility [~~to secure outpatient treatment or therapy~~] shall be provided if [~~when~~] preauthorized. If the Department for Social Insurance local office is closed, the nonemergency ambulance service shall be postauthorized. Preauthorization and postauthorization shall be performed by the Department for Medicaid Services or its authorized representative utilizing criteria shown in this administrative regulation. [~~Division of Medical Assistance.~~]

Section 4. [~~2.~~] Locally Authorized Medical Transportation. (1) A transportation preauthorization [~~Through December 31, 1990 a petty cash~~] system administered at each [~~the~~] local Department for Social Insurance office [~~level~~] shall provide for preauthorized nonemergency[~~, nonambulance~~] transportation approvals, including nonemergency ambulance services, limited to the provision of the services under the following conditions:

(a) The recipient [~~client~~] shall be traveling to or from a Medicaid [~~medical service~~] covered service [~~under a state plan~~], exclusive of pharmaceutical services [~~drugs~~];

(b) The service shall be determined to be medically necessary; [~~and~~]

(c) Payment for transportation shall be necessary to ensure [~~assure~~] that the medical service is secured; and

(d) Failure by the Medicaid Program to pay for transportation results in a hardship to the Medicaid recipient. A hardship shall not be considered to exist if free transportation which is appropriate for the recipient's medical needs is available or if use of an operational household vehicle is available, appropriate, and is not used for commercial purposes. [~~The same system of preauthorization of transportation shall continue in effect on and after January 1, 1991, except that the local petty cash system shall be dissolved and payments for locally authorized medical transportation shall be made directly to participating providers by the Medicaid program.~~]

(2) Locally authorized medical transportation [~~as above~~] shall be provided as necessary on an exceptional postauthorization basis with the additional limitation that postauthorization shall be justified by the recipient indicating [~~client showing~~] the need for medical transportation arose and was provided [~~fulfilled~~] outside normal working hours and that payment for the transportation has not been made.

Section 5. [~~3.~~] Determination of Necessity. (1) All approvals for nonemergency transportation services [~~Any determination of medical necessity of transportation,~~] and the provision of preauthorization and postauthorization, shall be made by the Department for Medicaid Services [~~cabinet~~] or by the department's [~~an~~] authorized representative.

(2) Only transportation within the medical service area shall be approved. Transportation services provided outside the medical service area shall be approved by the Department for Medicaid Services or the department's authorized representative if the medical service required by the recipient is not available in that area and the recipient has been appropriately referred by the medical provider within his medical service area. [~~unless preauthorized by the cabinet (or postauthorized in certain instances), except in instances where previously designated criteria for transportation not requiring authorization shall be met.~~]

(3) Only the least expensive available transportation suitable for the recipient's needs shall be approved.

Section 6. Material Incorporated by Reference. (1) The "Medicaid Transportation Services Manual", dated January 1996 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 7. The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: May 6, 1996

FILED WITH LRC: May 7, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 28, 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 June 23, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 no with 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 participating Medicaid medical transportation providers and Medicaid recipients using medical transportation services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Shown in companion regulation 907 KAR 1:061.

2. Continuing costs or savings: Shown in companion regulation 907 KAR 1:061.

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: Will reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid beneficiaries if medically necessary medical transportation is not 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 a companion regulation with 907 KAR 1:061, Payments for Medical transportation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

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 1:061. Payments for medical transportation.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 205, 42 CFR 440.170, 447.200 through 447.205, 42 USC 1396(d), EO 95-79

NECESSITY AND FUNCTION: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the Medicaid Program. Executive Order 95-79, effective December 28, 1995, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Department for Medicaid Services [~~cabinet~~] for medical transportation services.

Section 1. Definitions. For purposes of this administrative regulation, the following definitions apply:

(1) "Advanced life support" (ALS) ambulance services means ambulance services meeting the standards for advanced life support services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of ALS services.

(2) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.

(3) "Air ambulance provider" means an air ambulance service meeting the standards for provision of air ambulance services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of air ambulance services.

(4) "Ambulatory recipient who is disoriented" means an individual who is confused, especially with respect to time, place, and identity of persons or objects. The extent of disorientation shall be sufficient to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(5) "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services. A parent who must accompany a minor child is considered to be an attendant.

(6) "Basic life support" (BLS) ambulance services means

ambulance services meeting the standards for basic life support services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of BLS services.

(7) [~~(2)~~] "Commercial transportation carriers [~~vendors~~]" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public such as a taxi cab.

(8) "Department" means the Department for Medicaid Services.

(9) "Loaded miles" means miles when the transportation carrier is transporting at least one (1) patient.

(10) "Medical condition" is defined as any condition of the recipient which does not allow him to travel alone or without physical assistance.

(11) [~~(3)~~] "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (except community [~~e.g.,~~] mental health centers). The segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the department [~~cabinet~~].

(12) "Nonemergency health transportation services (NEHT)" means transportation services meeting the standards for nonemergency health transportation services as set by the Department for Health Services, if provided by a Medicaid provider appropriately licensed by the Cabinet for Health Services for the provision of NEHT services.

(13) [~~(4)~~] "Private automobile carrier [~~vendor~~]" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. [~~Included within this definition are ambulance type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program as a provider of ambulance services, if willing to accept private automobile vendor rates.~~]

(14) "Recipient" means an individual who is eligible for Medicaid benefits and meets the criteria for transportation services as defined in 907 KAR 1:060.

(15) [~~(5)~~] "Specialty [~~individual~~] carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment required shall be a van or similar type vehicle with a ramp or lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient [~~if necessary~~]. To be considered a specialty [~~individual~~] carrier for purposes of reimbursement from the department [~~cabinet~~], the carrier shall be recognized by the department [~~cabinet~~] as a specialty [~~individual~~] carrier with approval given by the department [~~cabinet~~] for reimbursement at specialty [~~individual~~] carrier rates. The department [~~cabinet~~] may require the submission of documentation designed to show that the vendor is capable of providing specialty [~~individual~~] carrier service in an adequate and safe manner.

(16) "Upper limit" means the maximum reimbursement rate that the department shall pay the transportation provider for the services provided.

(17) [~~(6)~~] "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred if [~~when~~] the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.

Section 2. Licensed Ambulance Services Reimbursement. (1) The department [~~cabinet~~] shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the department [~~cabinet~~].

(2) The maximum rate shall be the amount arrived at by combining the base rate, mileage allowance, oxygen rate, and cost of other supplies [~~following component costs~~], as applicable:

(a) The base rate for ALS emergency transportation to the emergency room of a hospital [~~, which~~] shall be set at eighty-five (85) [~~fifty (50)~~] dollars per one (1) way trip [~~and includes all mileage costs for the first ten (10) miles~~]; the mileage allowance for trips shall be three (3) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty-five (25) dollars shall be set for each additional recipient with no additional allowance for mileage.

(b) The rate for air ambulance transportation shall be an all-inclusive rate. Reimbursement shall be the provider's usual and customary charge not to exceed the upper limit of $3,500. All claims for air ambulance transportation services shall be submitted to the department and shall be reviewed for determination that air transport was medically necessary and appropriate. [~~A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;~~]

(c) The base rate for BLS emergency transportation to the emergency room of a hospital shall be set at sixty-five (65) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars and fifty (50) cents per mile for mileage from mile one (1); a flat rate of twenty (20) dollars shall be set for each additional recipient with no additional allowance for mileage.

(d) The base rate for any ALS or BLS providing emergency ambulance transportation to an appropriate medical facility or provider which is not the emergency room of a hospital shall be set at fifty-five (55) dollars per one (1) way trip; the mileage allowance for trips shall be two (2) dollars per mile from mile one (1); a flat rate of fifteen (15) dollars shall be set for each additional recipient with no additional rate for mileage. Payment shall be contingent upon review of required documentation. Claims shall be reviewed by the department. Required documentation shall be a statement of a medical emergency by the attending medical provider.

(e) The base rate for NEHT services when transporting a recipient who is on a stretcher to a medical provider, other than a pharmacy, shall be set at forty (40) dollars per one (1) way trip; the mileage allowance for trips shall be one (1) dollar and fifty (50) cents per mile. The reimbursement for NEHT services when transporting a recipient who is in a wheelchair shall be in accordance with Section 6 of this administrative regulation.

(f) The base rate for nonemergency transportation for all licensed ambulance services when no medical care or treatment of a recipient is required or indicated during transport shall be the rate specified in paragraph (e) of this subsection.

(g) [~~(e)~~] An oxygen rate, which is set at ten (10) [~~eight (8)~~] dollars per one (1) way trip; for all licensed ambulance services, excluding air ambulances. [~~and~~]

(h) [~~(d)~~] The cost [~~(as determined by the cabinet)~~] of other itemized supplies for ALS or BLS emergency transportation services shall be the actual cost as reflected on the transportation provider's invoice which shall be maintained in the provider's files and shall be produced upon request by the department.

Section 3. Commercial Transportation Carriers Reimbursement [~~Vendors~~]. The department [~~cabinet~~] shall reimburse participating commercial transportation carriers at usual commercial rates with limitations as follows:

(1) For taxi services provided in regulated areas the provider shall be reimbursed the normal passenger rate charged to the general public for a one (1) way trip regardless of the number of Medicaid eligible recipients transported when the trip is within the medical service area (as defined in 907 KAR 1:060), i.e., the taxi shall be paid the single passenger rate regardless of the number of additional passengers.

(2) For [~~vendors at the normal passenger rate charged to the general public, taking into consideration as applicable the reduced fees frequently and customarily paid when multiple passengers are transported at the same time. The following maximum rates shall be applicable for franchised (licensed)~~] taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for [~~franchised (licensed)~~] taxi services in regulated areas when they go outside the medical service area (as defined in 907 KAR 1:060), the provider shall be reimbursed the normal passenger rate charged the general public for a single passenger (without payment for additional passengers, if any), up to the upper limit; reimbursement for transport of a parent or attendant shall be considered included within the upper limit allowed for the trip. The upper limit for a taxi transporting a recipient shall be:

(a) [~~(1) The upper limit shall be~~] The usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles.

(b) [~~(2) The upper limit shall be~~] The usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(c) [~~(3) The upper limit shall be~~] The usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(d) [~~(4) The upper limit shall be~~] The usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles.

(e) [~~(5) The upper limit~~] For trips of fifty-one (51) miles or above, [~~shall be~~] the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles.

Section 4. Private Automobile Carriers Reimbursement [~~Vendors~~]. (1) The department [~~cabinet~~] shall reimburse private automobile carriers [~~vendors~~] at the basic rate of twenty-two (22) [~~twelve (12)~~] cents per mile plus a flat fee of four (4) [~~two (2)~~] dollars per recipient [~~eligible passenger~~] if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of six (6) [~~three (3)~~] dollars for the first recipient [~~passenger~~] plus four (4) [~~two (2)~~] dollars each for waiting time for additional recipients [~~eligible passengers~~]. Private automobile carriers [~~vendors~~] shall have a signed participation agreement with the department [~~for Medicaid Services~~] prior to furnishing reimbursable medical transportation services.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile carriers [~~vendors~~] shall be computed on the basis of a maximum allowable fee of ten (10) [~~five (5)~~] dollars for the first recipient [~~passenger~~] plus four (4) [~~two (2)~~] dollars each for waiting time for additional recipients [~~eligible passengers~~]. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of twenty-two (22) [~~twelve (12)~~] cents per mile plus four (4) [~~two (2)~~] dollars for waiting time would not equal the six (6) [~~three (3)~~] dollars or ten (10) [~~five (5)~~] dollars allowable amounts, the higher [~~that~~] amount may be paid to encourage private automobile carriers [~~vendors~~] to provide necessary medical transportation. Additionally, nothing in this section requires the department [~~cabinet~~] to pay the amounts specified if [~~in the event~~] the private automobile carrier [~~vendor~~] expresses a preference for reimbursement in a lesser amount; then [~~in that event,~~] the lesser amount shall be paid. Toll charges shall be reimbursable when presented with a receipt. [~~incurred.~~]

(4) Waiting time shall be a reimbursable component of the private automobile carrier [~~vendor~~] transportation fee only if [~~when~~] waiting time occurs. If [~~When~~] waiting time occurs due to admittance of the recipient into the medical institution, the private automobile carrier [~~vendor~~] may be reimbursed for the return trip to the point of recipient pickup as though the recipient [~~client~~] were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section. Waiting time shall not be paid for the attendant or caretaker relative (e.g., mother, father) who is accompanying the recipient and not personally being transported for Medicaid covered service.

(5) If a private automobile carrier is transporting more than one (1) recipient, only one (1) mileage payment shall be allowed. Mileage shall be computed on the basis of the distance between the most remote recipient and the most remote medical service utilized; to include any necessary additional mileage to pick up and discharge the additional recipients.

Section 5. Noncommercial Group Carriers. The department [~~cabinet~~] shall reimburse participating noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the department [~~cabinet~~] by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported. Payment for a parent or other attendant shall be at the recipient rate.

Section 6. Specialty [~~Individual~~] Carriers. (1) Participating specialty [~~individual~~] carriers shall be reimbursed at the lesser of the following rates:

(a) The actual charge for the service; or

(b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the department [~~cabinet~~]; or

(c) The program maximum established for the service.

(2) Program maximums shall be [~~are~~]:

(a) For nonambulatory recipients who require the use of a wheelchair [~~patients; for transportation within a distance of ten (10) miles or less~~], the upper limit shall be twenty-five (25) dollars for the first recipient [~~patient~~] plus four (4) [~~ten (10)~~] dollars for each additional nonambulatory recipient [~~patient~~] transported on the same trip, for each time a recipient [~~patient~~] is transported to or transported from the medical service site. To this base rate shall [~~may~~] be added one (1) dollar and fifty (50) cents [~~two (2) dollars~~] per loaded mile for the first recipient [~~per patient~~] for miles the recipient [~~patient(s)~~] is transported [~~above ten (10) (one (1) way)~~], and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(b) For ambulatory recipients who are disoriented [~~patients; for transportation within a distance of ten (10) miles or less~~], the upper limit shall be twelve (12) dollars and fifty (50) cents for the first recipient plus four (4) dollars for each additional ambulatory disoriented recipient transported on the same trip, [~~per patient~~] for each time a recipient [~~patient(s)~~] is transported to or transported from the medical service site. To this base rate shall [~~may~~] be added one (1) dollar and fifty (50) cents [~~two (2) dollars~~] per loaded mile for the first recipient [~~per patient~~] for miles the recipient [~~patient~~] is transported [~~above ten (10) (one (1) way)~~], and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(c) For both paragraphs (a) and (b) of this subsection, [~~mileage~~

~~shall be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage shall be allowed only for those miles the recipient is actually transported in excess of ten (10).~~] empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty [~~individual~~] carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but shall not include [~~including~~] recipients who need to be transported as [~~a~~] stretcher patients; and

(b) Ambulatory recipients who are [~~but~~] disoriented [~~recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation shall be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation~~].

(4) The specialty carrier shall obtain a statement from the recipient's physician (or, if the recipient is in a [~~skilled~~] nursing [~~or intermediate care~~] facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. [~~Specially authorized transportation services provided by participating ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized;~~] Specially authorized transportation services [~~provided by participating specialty carriers, or as otherwise~~] authorized in unforeseen circumstances may be paid for at a rate adequate to secure the necessary service; [~~in no event, however, shall~~] the amount allowed shall not exceed the usual and customary charge of the provider. The department shall review and approve or disapprove requests for specially authorized transportation services based on medical necessity.

Section 8. Use of Flat Rates. [~~When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area),~~] Transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the participating transportation provider computed in the usual manner, if:

(1) The recipient chooses to use a medical provider outside the medical service area (defined in 907 KAR 1:060); and

(2) The medical service is available in the recipient's medical service area; and

(3) The recipient has not been appropriately referred by the medical provider within his medical service area.

Section 9. Posting of Rates. All transportation providers, except private auto providers, shall be allowed to post their rates with the Department for Social Insurance offices in the counties they serve. These rates shall apply for all Medicaid recipients and shall be effective for a twelve (12) month period and may be revised once per quarter. The rate charged to the Medicaid Program shall not exceed the rate charged to the general public.

Section 10. [~~9.~~] Meals and Lodging. The flat rate [~~upper limits~~] for meals and lodgings for recipients and attendants when preauthorized (or postauthorized, if appropriate) by the department [~~cabinet~~] shall be as follows:

(1) Standard area:

(a) Meals: breakfast - four (4) dollars per day; lunch - five (5) dollars per day; dinner - eleven (11) dollars per day; and

(b) Lodgings: [~~actual cost up to $40 per day if known; if not known,~~] forty (40) dollars per day.

(2) High rate area:

(a) Meals: breakfast - five (5) dollars per day; lunch - six (6) dollars per day; dinner - fifteen (15) dollars per day; and

(b) Lodgings: [~~actual cost up to $55 per day if known; if not known,~~] fifty-five (55) dollars per day.

Section 11. [~~10.~~] Limitations. (1) Any reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization, for medical transportation as required by the department [~~cabinet~~].

(2)(a) Authorization shall not be granted for recipients transported for purposes other than to take the recipient to or from covered Medicaid services being provided to that recipient, except in the instance of one (1) parent accompanying a child to or from covered medical services being provided to the child or if one (1) attendant is authorized for a recipient traveling to or from covered medical services based on medical condition of the recipient.

(b) Reimbursement shall be limited to transportation services and shall not include the services, salary or time of the attendant or parent.

(3) An individual who owns a taxi company and who uses the taxi as his personal vehicle shall be reimbursed at the private auto rate when transporting household family members.

(4) Mileage for reimbursement purposes shall be computed by the most direct accessible route from point of pick up to point of delivery.

Section 12. The provisions of this administrative regulation as amended shall be effective for services provided on or after January 18, 1996.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: May 6, 1996

FILED WITH LRC: May 7, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 28, 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 June 23, 1996 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 no with 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 participating Medicaid medical transportation providers and Medicaid recipients using medical transportation services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: $5.6 million (Cost)*.

2. Continuing costs or savings: $5.6 million (Cost)*.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: 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: Will reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid beneficiaries if medically necessary medical transportation is not 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 a companion regulation with 907 KAR 1:060, Medical Transportation. *It should be noted that cost savings measures implemented in 1995 are expected to save approximately $4.5 million annually, so the net cost impact is expected to be in the range of $1.1 million to $2.0 million annually.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation 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

PROPOSED NEW ADMINISTRATIVE REGULATIONS RECEIVED AS OF NOON, MAY 15, 1996

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(New Administrative Regulation)

201 KAR 8:121. Repeal of 201 KAR 8:120

RELATES TO: KRS 313.035
STATUTORY AUTHORITY: KRS 313.220
NECESSITY AND FUNCTION: KRS 313.035 permits the board to grant special (courtesy) licenses to graduates of approved dental schools in order to be employed in any of the state's dental or dental hygiene schools, as well as state, county and city health programs. Therefore, this administrative regulation was superseded by KRS 313.035 and should be repealed.

Section 1. 201 KAR 8:120 is hereby repealed.

STEPHEN T. SCHULER, D.M.D., President
APPROVED BY AGENCY: March 9, 1996
FILED WITH LRC: May 10, 1996 at 1 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 28, 1996, at 10101 Linn Station Road, Suite 540, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 23, 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 canceled. 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: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie
(1) Type and number of entities affected: 20 dental school graduates.
(2) Direct and indirect costs or savings on the: 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:
(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: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(4) Assessment of anticipated effect on state and local revenues: None
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None
(a) Geographical area in which administrative regulation will be implemented:
(b) Kentucky:
(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.
(8) Assessment of expected benefits: None
(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: Duplication: KRS 313.035 replaced this administrative regulation in 1990.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(10) Any additional information or comments: This administrative regulation is duplicative of KRS 313.035 and should therefore be repealed.
(11) TIERING: Is tiering applied? None

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(New Administrative Regulation)

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 138.655 through 138.7291, 186.650, 281.725, 49 CFR Part 390.21, 49 USC Chapter 317
STATUTORY AUTHORITY: KRS 138.725, 281.600, 49 USC Chapter 317
NECESSITY AND FUNCTION: 49 USC 317.05 requires that each state be in conformance with the provisions of the International Fuel Tax Agreement (IFTA) by September 30, 1996. If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes which are subject to the provisions of IFTA are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All three (3) of these taxes are administered under the provisions of KRS 138.655 through 138.7291. House Bill 322 passed by the 1996 Regular Session of the General Assembly amended portions of KRS 138.655 through 138.7291 clearly establishing that the tax set forth in KRS 138.6601 (which was in direct conflict with the federal mandate) was repealed and that the motor fuel use taxes imposed by KRS 138.660(1) and (2) were to be applicable to two (2) axle motor vehicles with a gross weight or registered gross weight above 26,000 pounds. The General Assembly did not address the myriad provisions of IFTA relating to application for license, payment of motor fuel taxes, bond requirements, record retention, auditing of the motor carriers, appeal procedure, and other administrative provisions. Attorney General Opinion OAG 95-33 regarding the IFTA federal mandate opined that a state law that is not in conformity with IFTA is

preempted on an interstate basis. This administrative regulation is necessary to set forth the administrative procedures for the implementation of the International Fuel Tax Agreement in Kentucky, to note the differences between the requirements of IFTA and Kentucky state law, to clearly establish, where applicable, when the provisions of IFTA preempt state law, and to provide for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions. (1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and:

(a) Where the operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or can be made available; and

(b) Where some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA "Procedures Manual."

(5) "Jurisdiction" means a state if the United States, the District of Columbia, or a province or territory of Canada.

(6) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to intrastate motor carriers subject to the taxes imposed by KRS 138.660(1) and (2).

(7) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to motor carriers subject to the tax imposed by KRS 138.660(3).

(8) "Motor carrier" means as defined in KRS 138.655(5).

(9) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(10)(a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that meets at least one (1) of the following criteria:

1. A single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. A single vehicle having three (3) or more axles, regardless of weight; or

3. A vehicle used in combination, when the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle shall not include the following:

1. A recreational vehicle;

2. A motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. A motor vehicle used to transport persons for hire.

(11) "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(12) "Recreational vehicle" means a motor vehicle such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual and which is not used in connection with any business endeavor.

(13) "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at the time of purchase.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Agreement are incorporated by reference in Section 15 of this administrative regulation. The provisions of these documents, except where specifically otherwise identified in this administrative regulation regarding the administration for KIT licensees, shall govern the administration of Kentucky's collection of the taxes imposed by KRS 138.660(1) and (2):

(1) Articles of agreement as revised January 1996;

(2) Procedures Manual as revised February 1996; and

(3) Audit Procedures Manual as revised February 1996.

Section 3. Fuel Tax License. (1)(a) Each motor carrier which operates a qualified motor vehicle in interstate commerce and which has Kentucky as the base jurisdiction for the operation of its qualified motor vehicles shall each year apply to the Division of Motor Carriers for an IFTA license or its renewal.

(b) A motor carrier which operates exclusively in intrastate commerce may apply for an IFTA license.

(c) Application for the IFTA license shall be on form TC 95-203, "Application for Motor Fuel Tax Licensing for IFTA Carriers" as revised February 1996 which is incorporated by reference in Section 15 of this administrative regulation.

(2)(a) Each motor carrier which operates all of its qualified motor vehicles exclusively in intrastate commerce and which does not apply for an IFTA license pursuant to subsection (1) of this section shall apply each year for a KIT license or its renewal.

(b) Application for the KIT license shall be on form TC 95-200a, "Application for Kentucky Intrastate Tax License" as revised January 1996 which is incorporated by reference in Section 15 of this administrative regulation.

(3)(a) Each fuel tax license issued shall expire on December 31 of the year in which the license was issued.

(b) The Transportation Cabinet shall begin accepting renewal applications on November 1 of each year.

(4)(a) A legibly reproduced copy of a fuel tax license issued by the Kentucky Transportation Cabinet or an IFTA license issued by another jurisdiction shall be carried in each qualified motor vehicle when operating on any public highway of Kentucky.

(b) An IFTA license issued by Kentucky authorizes a qualified motor vehicle for motor fuel tax purposes to be operated in any IFTA jurisdiction.

(5)(a) The Transportation Cabinet shall issue two (2) decals per qualified motor vehicle to each holder of a fuel tax license.

(b) Unless the qualified motor vehicle is being operated on a trip permit pursuant to KRS 138.665, a fuel tax decal issued by the Transportation Cabinet or a decal issued by another IFTA jurisdiction denoting proof of issuance of an IFTA license shall be displayed on the exterior portion of both sides of the cab of each qualified motor vehicle.

(c) The decals shall not be transferred between qualified motor vehicles.

(d) New decals shall be issued each calendar year.

(6) Each fuel tax licensee which does not have a U.S. Department of Transportation motor carrier identification number or an Interstate Commerce Commission motor carrier identification number shall apply for an intrastate motor carrier identification number on Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.

(a) The intrastate motor carrier identification number assigned to a KIT licensee shall be displayed on each qualified motor vehicle it operates in the same manner as required pursuant to 49 CFR Part 390.21 except the KIT identification number shall not be preceded by the letters "USDOT" but rather followed by the letters "KY".

(b) All fuel tax licensees shall display on each qualified motor vehicle in accordance with the provisions of 49 CFR part 390.21 the name of and location of the motor carrier.

(7)(a) Each fuel tax licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations shall be conducted in the name in which the fuel tax license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) All licensees shall use the name utilized in the application for the license in all documents relating to their operations. Both this name and the fuel tax license number shall be used in correspondence with the Transportation Cabinet.

Section 4. KYU License. (1) Each motor carrier subject to the tax imposed by KRS 138.660(3) shall apply for a KYU license prior to operating on the highways of Kentucky a motor vehicle subject to the tax imposed by KRS 138.660(3).

(2) Application for the KYU license shall be on form TC 95-200, "Application for Kentucky Highway Use License" as revised June 1995 which is incorporated by reference in Section 15 of this administrative regulation.

(3) Every original applicant for a KYU license shall at the time of the application file a bond with the Transportation Cabinet in accordance with the provisions of Section 6 of this administrative regulation.

(4)(a) Each KYU licensee shall assign a unique number to each individual motor vehicle subject to the tax in KRS 138.660(3).

(b) The unique vehicle identification number shall be displayed on the front of the vehicle readily visible in daylight hours from a distance of 100 feet when the vehicle is not in motion.

(c) This number shall be in sharp color contrast to the background of the vehicle.

(d) This number shall not be placed higher than the bottom of the windshield or lower than the bottom of the front bumper.

(5) Each KYU licensee shall either:

(a) File a form TC 95-9, "Request for Validation of Motor Carrier Control Number", June 1996 edition with the Transportation Cabinet; or

(b) Display the KYU number on each motor vehicle subject to the tax imposed by KRS 138.660(3) it operates in the same manner as required pursuant to 49 CFR Part 390.21.

(6)(a) Each KYU licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations subject to KRS 138.660(3) shall be conducted in the name in which the KYU license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) All KYU licensees shall use the name utilized in the application for the license in all documents relating to their operations. Both this name and the KYU license number shall be used in correspondence with the Transportation Cabinet.

(7)(a) Each KYU licensee shall register each of its vehicles subject to the tax imposed by KRS 138.660(3) with the Transportation Cabinet. The registration shall be reported on form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", June 1996 edition. This form is incorporated by reference in Section 15 of this administrative regulation.

(b) If the licensee sells, leases, or buys a vehicle subject to the tax imposed by KRS 138.660(3), the KYU licensee shall immediately file a copy of the Form TC 95-38 with the Transportation Cabinet showing the addition to or deletion from its fleet.

Section 5. Leasing of Motor Vehicles. The following shall apply in the case of lessor, lessee, independent contractors, and household goods agents:

(1) A lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee. The lessor may be issued a license if an application has been properly filed and approved pursuant to the provisions of Sections 3 or 4 of this administrative regulation.

(2) If a motor carrier used independent contractors under leases of thirty (30) days or more, the lessor and lessee shall have the option of designating which party is to report and pay the fuel use tax imposed by KRS 138.660(1) and (2) and the fuel taxes imposed by other jurisdictions.

(3) If the lessee assumes responsibility for reporting and paying motor fuel taxes pursuant to subsection (2) of this section, the base jurisdiction for IFTA purposes shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor.

(4) If a motor carrier rented a motor vehicle for a period of less than thirty (30) days, from a lessor regularly engaged in the business of leasing, or renting motor vehicles without drivers, for compensation to licensees, the lessor shall pay the fuel use taxes unless both of the following conditions are met:

(a) The lessor has a written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and

(b) The lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.

(5) If the motor carrier uses independent contractors under leases of thirty (30) days of less, the trip lessor shall report and pay all fuel taxes.

(6) If the motor carrier is a household goods carrier using independent contractors, agents, or service representatives, under intermittent leases, the party liable for all motor fuel taxes shall be:

(a) The lessee when the qualified motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of IFTA shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor or lessee.

(b) The lessor who is the independent contractor, agent, or service representative when the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purpose of IFTA shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes.

(7) The lease shall be made available by either the lessee or the lessor upon request of the Transportation Cabinet.

Section 6. Bonding Requirements. (1) The bond required by KRS 138.670 shall be applicable to the taxpayers subject to KRS 138.660(3).

(2) The Transportation Cabinet shall not require the bond for the payment of the taxes imposed by KRS 138.660(1) and (2) unless the licensee meets one (1) of the following criteria:

(a) The licensee has failed to timely file a report required by Section 7 of this administrative regulation;

(b) The licensee has failed to remit all of the tax due for a taxable quarter;

(c) An audit of the licensee indicates recordkeeping or other administrative problem; or

(d) The licensee has had his IFTA license or the license required by KRS 138.665 revoked, suspended, or canceled.

(3) If a bond is required pursuant to subsection (2) of this section, the total amount of the bond shall be equivalent to twice the estimated average tax liability for the reporting period or as required by KRS 138.670, whichever is greater.

(4) A licensee required to post a bond pursuant to this section may deposit with the Transportation Cabinet one (1) of the following:

(a) A surety bond;

(b) Bonds or other obligations of the United States, Canada, or the Commonwealth of Kentucky made payable to the Commonwealth of Kentucky;

(c) Automatically renewable time certificates of deposit issued by a bank doing business in the Commonwealth of Kentucky and insured

by the Federal Deposit Insurance Corporation, made in the name of licensee, payable to the Commonwealth of Kentucky and containing the provision that interest earned shall be payable to the licensee but that the certificates can only be canceled by written authorization from the Transportation Cabinet;

(d) Investment certificates or share accounts issued by a savings and loan association doing business in the Commonwealth of Kentucky and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, shall be delivered to the Transportation Cabinet with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Commonwealth of Kentucky; or

(e) A cash bond submitted in the form of a cashier's check, money order, or other certified funds which are payable to the Commonwealth of Kentucky.

(5) The licensee shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee.

(6)(a) Proof of the bond required pursuant to subsection (1) of this section, may be filed on form TC 95-201, "Kentucky Highway Use Bond", June 1995 edition which is incorporated by reference in Section 15 of this administrative regulation.

(b) Proof of the bond required pursuant to subsection (2) of this section, may be filed on form TC 95-205, "Kentucky Fuel Users Bond", June 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.

Section 7. Tax Payment and Reporting. (1) The Transportation Cabinet shall by the last day of each quarterly reporting period mail the appropriate tax report form to each fuel tax licensee.

(a) Kentucky-based IFTA licensees shall be mailed form "IFTA Quarterly Fuel Tax Report" IFTA 100, November 1994 edition which is incorporated by reference in Section 15 of this administrative regulation.

(b) KIT licensees shall be mailed form "Highway Quarterly Tax Return", Form TC 95-101a, January 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.

(c) Except as provided in subsection (3) of this section, each licensee shall comply with KRS 138.685.

(d) Even if a fuel tax licensee had no operations during the reporting quarter, the licensee shall file the tax reporting form.

(2)(a) The Transportation Cabinet shall send to each at the beginning of each calendar year to each KYU licensee all of the KRS 138.660(3) quarterly tax report forms "Kentucky Weight Distance Tax Form", Form TC 95-101, May 1996 edition due for that calendar year. This form is incorporated by reference in Section 15 of this administrative regulation.

(b) KYU licensees shall comply with the provisions of KRS 138.685.

(3)(a) When filing a motor fuel tax report, an IFTA licensee shall apply the overpayment generated in one (1) jurisdiction to the motor fuel taxes owed to another jurisdiction, remitting the net amount owed to the Transportation Cabinet.

(b) IFTA licenses shall present one (1) check to the Transportation Cabinet to pay the motor fuel taxes due pursuant to KRS 138.660(1) and (2) as well as the motor fuel taxes due all other IFTA jurisdictions.

(c) If a fuel tax licensee has been required to file a bond pursuant to Section 6(2) of this administrative regulation, the check to pay the motor fuel taxes due shall be certified.

(d) The requirement for a certified check for KYU licensees is waived pursuant to KRS 138.665 unless the motor carrier is notified by the Transportation Cabinet to the contrary. The cabinet may require a certified check from a motor carrier when the motor carrier:

1. Is not of sound financial condition;

2. Has not established a record of consistent and continued compliance with KRS 138.655 through 138.7291; or

3. Is operating on the highways of Kentucky without a KYU license.

(4) Computer-generated tax returns can be used in lieu of the forms sent out by the Transportation Cabinet only if the licensee receives advance written approval of its format from the Transportation Cabinet, Division of Motor Carriers.

Section 8. Tax Recordkeeping. (1) Each fuel tax licensee shall maintain a complete record of all motor fuel purchased, received, or used in the conduct of its business. The fuel records shall contain at least the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person from whom purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and

(g) If applicable, complete records on power takeoff use of motor fuel.

(2) Each fuel tax licensee shall maintain detailed distance records which show operations on an individual-vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

(a) Both taxable and nontaxable usage of fuel;

(b) Distance traveled for taxable and nontaxable use; and

(c) Beginning and ending date of each trip;

(d) Trip origination and destination;

(e) Route traveled on trip;

(f) Trip beginning and ending odometer readings;

(g) Total mileage of each trip; and

(h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

(3) In order for a fuel tax licensee to obtain credit for tax-paid fuel purchases, a receipt or invoice, a credit card receipt or automated vendor-generated invoice or transaction listing shall be maintained by the fuel tax licensee. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

(a) The date of purchase of fuel;

(b) The name and address of the person from whom purchased;

(c) The number of gallons purchased;

(d) The type of fuel;

(e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. (In the case of a lessee/lessor agreement, receipts are acceptable in either name, provided the records firmly indicate the legal connection to the reporting party.)

(4) A fuel tax licensee may only apply for credit in the case of withdrawals from licensee-owned, tax-paid bulk fuel storage if the following detailed records are kept:

(a) Date of withdrawal;

(b) Number of gallons withdrawn;

(c) Fuel type;

(d) Unit number of the motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and inventory records to substantiate that tax was paid on the bulk purchase.

(5)(a) Fuel tax licensees shall account separately for tax-paid fuel purchased as storage or bulk from fuel purchased over the road.

(b) Copies of all delivery tickets and receipts for storage or bulk fuel shall be retained by the licensee.

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in qualified motor vehicles from other uses.

(d) Each tax-paid purchases shall be supported by a receipt,

invoice, credit card receipt or automated vendor-generated invoice or transaction listing.

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number, since only vehicles identified with the fuel tax licensee's operation may be reported for mileage or fuel consumption.

(6) Separate totals shall be compiled for each of the following fuel types used by a fuel tax licensee:

(a) Gasoline;

(b) Diesel;

(c) Kerosene;

(d) Gasohol;

(e) Liquid petroleum gas; and

(f) Compressed natural gas.

(7) Each fuel tax licensee shall retain the information required by subsections (1) through (6) of this section for a period of four (4) years from the date of filing the tax report based on these records.

(8) Each KYU licensee shall maintain the following records on the operation within Kentucky of each motor vehicle which is subject to the tax imposed by KRS 138.660(3):

(a) Type of motor vehicle;

(b) Declared gross weight of the motor vehicle;

(c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Mileage operated by unit number in Kentucky as reported on trip sheets and driver logs which shall include the following:

1. Beginning and ending odometer readings of each trip;
2. Each route driven;
3. Beginning and ending date of each trip;
4. Trip origin and destination;
5. Trip beginning and ending odometer readings; and
6. Total trip miles; and

(e) Bills of lading;

(f) Dispatch records;

(g) Maintenance records;

(h) Off-highway mileage which includes periodical logs showing entering and leaving of public highways; and

(i) Manual or computer-generated mileage recaps for Kentucky.

(9) Each KYU licensee shall retain the information required by subsection (8) of this section for a period of five (5) years from the date of filing the tax report based on these records.

(10) Both the lessor and lessee involved in the short- or long-term lease of motor vehicles shall maintain sufficient records, including copies of the leases and any supplemental agreements, to allow determination at any time of the entity responsible for reporting or payment of the taxes.

(11) Records may be retained on microfilm, microfiche, or other computerized or condensed record storage system if the system has been preapproved by the Transportation Cabinet's Division of Audit Review.

(12) Failure to provide records required for the purpose of an audit shall extend the limitations set forth in subsections (7) or (9) of this section until the records are provided.

(13) If a motor carrier chooses to use on-board computer recording devices in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and motor carrier responsibility shall be as set forth in Section III.A.5. of the IFTA "Procedures Manual" which is incorporated by reference in Section 15 of this administrative regulation.

Section 9. Auditing. (1)(a) The audit of the fuel tax licensees shall be performed in accordance with the provisions of the "IFTA Audit Procedures Manual" which is incorporated by reference in Section 15 of this administrative regulation.

(b) The audit of KRS 138.660(3) tax records shall be performed by verifying the following:

1. The combined license weight of each motor vehicle operated by the motor carrier;
2. Odometer correctness;
3. Reports of each trip which adequately identifies the truck, trip mileage, and route driven;
4. Weight reports;
5. Continuity of trips;
6. Off-highway mileage;
7. Seasonal variations in the motor carrier's business;
8. Electronic data processing; and
9. Sampling of representative months of operation.

(2) The Transportation Cabinet shall audit at least fifteen (15) percent of the IFTA licensees with a Kentucky base jurisdiction during a five (5) year period.

(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the motor carrier in writing advising of the approximate date that the audit is to be conducted and the time period the audit will cover.

(4) If it is determined that the fuel tax licensee's operational records are not located in Kentucky and it is necessary for the Transportation Cabinet's auditors to travel to where the records are maintained, the fuel tax licensee shall pay the Transportation Cabinet for the travel expenses incurred by its auditors in accordance with the per diem and travel rates established in 200 KAR 2:006.

(5) The auditor shall conduct and document a preaudit conference with the motor carrier outlining the motor carrier's operation, audit procedures, records to be examined, sample period, and sampling procedures. The motor carrier and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the close-out conference.

(6) The auditor shall conduct and document a close-out conference with the motor carrier outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report should be addressed.

(7) The Transportation Cabinet shall furnish the motor carrier a letter of audit findings and recap schedules. If requested, the cabinet shall supply other work papers to the motor carrier.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue an audit supplemental tax statement.

(9) The motor carrier shall within forty-five (45) days of the date of the audit supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet.

(10) The motor carrier may within forty-five (45) days of the date of the audit findings, protest in writing to the Transportation Cabinet any portion of the audit.

(11) If the motor carrier does not protest pursuant to subsection (9) or (10) of this section, the audit or the audit supplemental tax statement shall be final on the 45th day.

(12)(a) If a motor carrier protests pursuant to subsection (9) or (10) of this section the protest shall include a supporting statement which identifies the specific adjustments requested or the portions of the audit being protested and setting forth the reasons the protest is being made.

(b) If the supporting statement is sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement, the motor carrier shall be notified of the change and the amended audit or amended supplemental tax statement shall become final.

(c) If the supporting statement is not sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement exactly as requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Audit Review. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(d) Within twenty (20) days of the information gathering/protest

conference the Transportation Cabinet shall issue the final audit or final audit supplemental tax statement.

(13) If the motor carrier so desires, he may, within thirty (30) days of the date of the final audit or final supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

(14)(a) In the case of a fuel tax audit of an IFTA licensee, the licensee may request any other jurisdiction to audit Kentucky's audit findings.

(b) Each jurisdiction to whom a request is made may elect to accept or deny the request.

(c) Each jurisdiction electing to audit the licensee's records shall audit only for its own portion of the licensee's operations. The licensee shall make its records available at the office of the jurisdiction, at a place designated by the jurisdiction, or pay per diem and travel expenses associated with conducting an audit at the licensee's place of business.

Section 10. Assessment. (1)(a) If a fuel tax licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the fuel tax liability of the licensee for each jurisdiction.

(b) If a KYU licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the tax liability of the licensee relating to KRS 138.660(3).

(c) If a motor carrier fails, neglects, or refuses to obtain either a fuel tax license or a KYU license, the Transportation Cabinet may, on the basis of the best information available to the cabinet, determine the KRS 138.660(1) and (2) or (3) tax liability of the motor carrier for Kentucky.

(2) If an examination of a motor carrier's tax returns indicate that additional tax is owed or if the Transportation Cabinet determines a tax liability pursuant to subsection (1), (2) or (3) of this section, the Transportation Cabinet shall mail the motor carrier a supplemental tax statement.

(3) The motor carrier shall within forty-five (45) days of the date of the supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet.

(4) If the motor carrier does not protest pursuant to subsection (3) of this section, the supplemental tax statement shall be final on the 45th day.

(5)(a) If a motor carrier protests pursuant to subsection (3) of this section, the protest shall include a supporting statement which identifies the specific adjustments requested and setting forth the reasons the protest is being made.

(b) If the supporting statement is sufficient to cause the Transportation Cabinet to change the supplemental tax statement, the motor carrier shall be notified of the change and the amended supplemental tax statement shall become final.

(c) If the supporting statement is not sufficient to cause the Transportation Cabinet to change the supplemental tax statement exactly as requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Motor Carriers. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final supplemental tax statement.

(6) If the motor carrier so desires, he may, within thirty (30) days of the date of the final supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 11. Trip Permits. (1) A motor carrier who does not have a required license may operate on Kentucky's highways pursuant to a temporary trip permit issued pursuant to KRS 138.665.

(2) Application for a temporary trip permit may be made by applying to the Division of Motor Carriers. The application may be made in person, in writing, or by telephone or facsimile communication.

(a) The address for written requests is P.O. Box 2007, Frankfort, Kentucky 40602;

(b) The location for in person requests is Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky;

(c) The telephone number of the Division of Motor Carriers is (502) 564-4540;

(d) The telephone number for the facsimile machine in the Division of Motor Carriers is (502) 564-4138.

(3) The application for a temporary trip permit shall contain the following information:

(a) The name and address of the applicant;

(b) The year, make, and serial (vehicle identification) number of the motor vehicle for which the application is being made; and

(c) The combined gross weight of the motor vehicle.

Section 12. Fuel Tax Refunds or Credits. (1) A fuel tax licensee shall be allowed to carry forward a motor fuel tax credit for eight (8) quarters.

(2) A refund request from a fuel tax licensee shall be presented in writing and detail the reason for the requested refund.

(3)(a) A full credit shall be allowed IFTA and KIT licensees for tax-paid fuel purchases placed in a qualified motor vehicle.

(b) Any excess of fuel tax paid over tax liability in any member jurisdiction shall be credited in full to tax liability in other member jurisdictions or to the IFTA licensee's account ledger, as appropriate.

(4)(a) Motor fuel tax refunds to IFTA licensees shall be made only when all motor fuel tax liability, including audit assessments, has been satisfied to all member jurisdictions.

(b) If an IFTA licensee requests a legitimate refund of a motor fuel tax credit balance from Kentucky, it shall be paid within ninety (90) days from the receipt of the written request.

(5)(a) A fuel tax licensee may apply to the Transportation Cabinet for refund of the fuel tax imposed by KRS 138.660(1) or (2) when the fuel was consumed from the same tank that is permanently attached to the power unit of the qualified motor vehicle and serves to power the operation of the qualified motor vehicle on the highways and when the fuel was used for power take-off equipment such as mixers, pumps, load lifts, and refrigeration units.

(b) The application for the refund of fuel defined in subsection (3)(a) of this section shall be made on form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition to substantiate the nonhighway use of the fuel. This form is incorporated by reference in Section 15 of this administrative regulation.

Section 13. Tax Penalties and Interest. (1) The penalty for the late payment of the tax imposed by KRS 138.660(3) shall be as set forth in KRS 138.715.

(2) The penalty for the late payment of motor fuel tax imposed by KRS 138.660(1) and (2) or an IFTA jurisdiction shall be ten (10) percent of the tax due or fifty (50) dollars whichever is greater.

(3) The interest on the late payment of any of the taxes administered pursuant to this administrative regulation shall be as set forth in KRS 138.715.

(4) The taxes, penalties, and interest identified in KRS 138.675 shall also include the motor fuel taxes, penalties, and interest owed to other IFTA jurisdictions.

Section 14. License Cancellation, Refusal, and Reinstatement. (1) If a motor carrier fails to comply with the provisions of KRS 138.655 through 138.7291, or this administrative regulation, the fuel tax license or KYU license may be canceled in accordance with the

provisions of KRS 138.675.

(2) Reasons for cancellation of or refusal to issue a license shall include, but not be limited to the following:

(a) Improper use of license or decal;

(b) Failure to file a tax return when due;

(c) Failure to pay all of the taxes owed;

(d) Failure to produce records after written request for the records;

(e) Failure to maintain records in the required manner; or

(f) Notification from another IFTA jurisdiction of motor fuel tax violations in that jurisdiction.

(3) A motor carrier shall be notified of the pending license cancellation or license refusal and offered the opportunity for an administrative hearing pursuant to Section 14 of this administrative regulation.

(4) If a license is canceled by the Transportation Cabinet, the motor carrier shall immediately return the license.

(5) If a motor carrier desires to have a canceled license reinstated, the carrier shall meet the following criteria:

(a) Prove to the Transportation Cabinet that sufficient records are being and will be maintained to file accurate tax reports;

(b) Submit quarterly tax reports for all missed reporting periods;

(c) Pay all taxes, penalties, and interest owed;

(d) Provide a bond pursuant to Section 6 of this administrative regulation; and

(e) Provide evidence of liability insurance, operating authority, and other items of KRS Chapter 281 applicable to the motor carrier.

Section 14. Appeal Procedure. (1) An appeal of any nontax action of the Transportation Cabinet resulting from its actions relating to KRS 138.655 through 138.7295 shall be in writing and directed to the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(2) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 15. Incorporation by Reference. The following documents are incorporated by reference in this administrative regulation:

(1) IFTA "Articles of Agreement," January 1996 edition;

(2) IFTA "Procedures Manual," February 1996 edition;

(3) IFTA "Audit Procedures Manual," February 1996 edition;

(4) Transportation Cabinet Form, "Application for Motor Fuel Tax Licensing for IFTA Carriers," TC 95-203, February 1996 edition;

(5) Transportation Cabinet Form "Application for Kentucky Intrastate Tax License", TC 95-200a, January 1996 edition;

(6) Transportation Cabinet Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition;

(7) Transportation Cabinet Form TC 95-200, "Application for Kentucky Highway Use License," June 1995 edition;

(8) Transportation Cabinet Form TC 95-9, "Request for Validation of Motor Carrier Control Number," June 1996 edition;

(9) Transportation Cabinet Form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", June 1996 edition;

(10) Transportation Cabinet Form TC 95-201, "Kentucky Highway Use Bond", June 1995 edition;

(11) Transportation Cabinet Form TC 95-205, "Kentucky Fuel Users Bond", June 1996 edition;

(12) Transportation Cabinet Form "IFTA Quarterly Fuel Tax Report" IFTA 100, November 1994 edition;

(13) Transportation Cabinet Form "Highway Quarterly Tax Return", Form TC 95-101a, January 1996 edition;

(14) Transportation Cabinet Form "Kentucky Weight Distance Tax", Form TC 95-101, May 1996 edition; and

(15) Transportation Cabinet Form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition.

Section 16. Repeal. The following administrative regulations are repealed:

(1) 601 KAR 9:074, Kentucky highway use license, records, and taxes; and

(2) 601 KAR 1:160, Motor carrier vehicle identification.

ED LOGSDON, Commissioner
FRED N. MUDGE, Secretary
KEVIN FLANERY, Executive Director

APPROVED BY AGENCY: May 13, 1996

FILED WITH LRC: May 15, 1996 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on June 27, 1996 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by June 22, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by June 22, 1996. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on June 27, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen Davis

(1) Type and number of entities affected: 30,000 motor carriers who operate trucks on the public highways of Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Even though no public comment hearing was held, no change is expected in the cost of living or employment in Kentucky as a result of implementation 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: Even though no public comment hearing was held, no change is expected in the cost of doing business as a result of the implementation of this administrative regulation. The passage of House Bill 322 by the 1996 General Assembly imposed the tax in KRS 138.660(2) on many two-axle vehicles with a gross vehicle weight rating above 26,000 pounds which had been previously exempt. Under the taxing scheme in place prior to the General Assembly enacting House Bill 322, most farm vehicles were exempt from the taxes imposed by KRS 138.660(1) and (2). Implementation of the IFTA federal mandate and House Bill 322 through this administrative regulation continues that exemption. Likewise, all buses were exempt from the taxes imposed by KRS 138.660(2). Additionally, charter buses were exempt from the taxes imposed by KRS 138.660(1). Implementation of the IFTA federal mandate and House Bill 322 through this administrative regulation provides for equal protection to all bus operators, exempting them from the taxes imposed by KRS 138.660(1) and (2).

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

1. First year following implementation: With Kentucky's entry into the International Fuel Tax Agreement the following changes in compliance, reporting and paperwork requirements will take place:

* The Kentucky-based motor carriers operating in interstate commerce will be able to file one quarterly fuel tax report with Kentucky instead of one with each of the jurisdictions in which it operates.

* The non-Kentucky-based motor carriers which operate in Kentucky will be able to file their Kentucky fuel tax report with its base jurisdiction as part of its tax report to that jurisdiction instead of filing a separate report with Kentucky.

* All KYU licensees will have to file a separate, one-page quarterly weight distance tax report with Kentucky. Currently, that report is part of the Kentucky fuel tax report.

* A KIT licensee which does not operate motor vehicles subject to the weight distance tax will be required to place a new motor carrier identification number on the side of its motor vehicles. Currently, most of these have KYU numbers on the side of the trucks, but the KYU number will now be reserved only for those motor carriers which operate trucks with a combined gross weight of 60,000 pounds or more and therefore subject to the weight distance tax. If the KIT licensee operates two-axle motor vehicles which were not previously subject to Kentucky's fuel taxes under KRS 138.660, the licensee will be required to place a KIT identification number on the side of the motor vehicle.

2. Second and subsequent years: Same as the first year, but after Kentucky has been a participating member of IFTA for one year, Kentucky auditors will perform the fuel tax audit of all Kentucky-based IFTA licensees. It is very unlikely that other jurisdictions will have need to ever audit these motor carriers for fuel tax purposes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The startup costs for participating in IFTA include developing, printing, and distributing new forms to all of the motor carriers based in Kentucky. Because the weight distance tax is not subject to the IFTA requirements, every motor carrier operating motor vehicles with a combined gross weight of 60,000 pounds or more in Kentucky will have to have separate mailings of its tax report forms. Since these are only going to be mailed once each year instead of quarterly as is now done, there should be little change to Kentucky in the cost of the distribution of tax reports.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: With other states auditing the motor carriers not based in Kentucky for fuel tax purposes that auditing cost will be decreased. However, since the auditing of the weight distance tax is still solely Kentucky's responsibility there will be no reduction in the audit responsibility of the state.

(b) Reporting and paperwork requirements: Being a member of IFTA requires much reporting and transfer of funds between states.

(4) Assessment of anticipated effect on state and local revenues: No change is expected in state or local revenues as a result of the implementation of this administrative regulation. However, the implementation of House Bill 322 and the federal mandate to join IFTA will cause the loss of over $7 million each year from the repealed surtax which was imposed by KRS 138.6601. Expanding the tax base to include two-axle vehicles will increase the fuel taxes collected by about $1 million each year. There has been much discussion of the possible increase in the collection of fuel taxes owed a jurisdiction as the result of the jurisdiction joining IFTA. However, to date no jurisdiction which has joined IFTA has been able to document a resulting increase in the amount of fuel taxes collected.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Funds which were appropriated for the Department of Vehicle Regulation in the biennium 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: A public comment hearing was not held and the administrative regulation will be implemented on a statewide basis.

(b) Kentucky: A public comment hearing was not held. However, the Transportation Cabinet cannot see an economic impact resulting from the implementation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The following alternatives were considered in the implementation of the taxes imposed in KRS 138.660:

* Assessment of fuel taxes on buses - noncharter over-the-road buses operating in Kentucky are subject to the fuel tax set forth in KRS 138.660(1) but not in (2). There are three motor carriers operating in Kentucky which have in the past been able to take advantage of the nonpayment of the tax imposed in KRS 138.660(2). IFTA does not allow a difference in the taxes imposed on qualified motor vehicles. To comply with IFTA the Transportation Cabinet chose to not impose an fuel tax on the three carriers rather than to exceed authority by imposing a fuel tax not authorized by the General Assembly. Therefore, vehicles used in the commercial transportation of persons were excluded from the definition of qualified motor vehicles.

* Assessment of fuel taxes on farm vehicles - KRS 186.050(4)(a) provides that farmers with a truck having a gross weight of 38,000 pounds or less may have it registered as a "farm vehicle". KRS 186.650 and 141.300(5)(b) exempts farm trucks of 38,000 pounds or less from including the semi-trailer for the purposes of motor carrier definition. Some farm vehicles will not include the semitrailer while others will. The distinction being made by law will allow some of the farm vehicles to escape the surtax found in KRS 138.660(2) even though the combined weight of the tractor and trailer being operated by the farmer is in excess of 26,000 pounds. This creates two classes of farm vehicles which would be treated differently under Kentucky's statutes. Due to the requirements of IFTA and the Equal Protection Clause of the Constitution, this cannot be allowed. Therefore, the Transportation Cabinet exempted all farm trucks properly registered as such from the definition of qualified motor vehicles.

* Treatment of interstate versus intrastate motor carriers - Those portions of KRS 138.655, et.seq. which conflict with IFTA, according to the Attorney General, have been preempted for motor vehicles being operated in interstate commerce. However, not addressed is the status of the same statutes as they are applicable to motor carriers operating exclusively in intrastate commerce. IFTA allows a motor carrier operating exclusively in intrastate commerce to obtain an IFTA license. (The motor carrier may be getting ready to expand its operations to other jurisdictions.) Therefore, there could be three separate ways of looking at motor carriers operating identical vehicles and performing the same functions. Due to the Equal Protection Clause of the Constitution, the Transportation Cabinet has determined that all motor carriers are to be treated the same for fuel tax purposes. Therefore, the administrative regulation identifies virtually identical requirements for IFTA and KIT licensees.

(8) Assessment of expected benefits: With the implementation of this administrative regulation, Kentucky will be able to participate in IFTA beginning with the collection of the fuel taxes required to be paid in October 1996. This participation is required by a federal mandate. Noncompliance would have meant that no interstate motor carrier would have been required to pay fuel taxes to Kentucky. This would have generated a loss to the Road Fund of at least $35 million each year.

(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: Possibly

(c) If detrimental effect would result, explain detrimental effect: If Kentucky were not allowed to participate in IFTA, there would be a

drastic cut in the amount of monies generated for the Road Fund each year. Such loss would result in a decrease in construction and/or maintenance on state highways. This would over time lead to a decrease in highway safety resulting in a detrimental effect on public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: As they relate to the administration of fuel taxes these statutes conflict with this administrative regulation KRS 138.660(2); 138.665(3); 138.670; 138.675; 138.695(1); 138.715; 138.729; 186.650; 141.300(5)(b). It is important to note that as these statutes relate to the administration of the weight distance tax, there is no conflict and the administrative regulation is in conformity with the statutes.

(a) Necessity of proposed regulation if in conflict: In order participate in IFTA and then to provide equal protection to intrastate carriers, some of the procedures, recordkeeping, audits, etc. set forth in KRS 138.655 et. seq. must be overridden. The specific areas of concern are buses, farm trucks, audit periods, record retention periods, length of time a credit may be carried forward, and penalties imposed.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes (Explain why tiering was or was not used) There are different requirements for those carriers subject to the weight distance tax.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 USC Chapter 317.

2. State compliance standards. Kentucky adopted the provisions of the International Fuel Tax Agreement but expanded them to include those motor carriers operating exclusively in intrastate commerce.

3. Minimum or uniform standards contained in the federal mandate. By October 1, 1996 each state, except Hawaii, must only require the reporting and collection of fuel taxes from interstate motor carriers in accordance with the requirements of the International Fuel Tax Agreement. Therefore, the provisions of the International Fuel Tax Agreement become the federal mandate standards. These provisions include a requirement for uniform taxation of all qualified motor vehicles (the rate of fuel tax charged is inmaterial, but each qualified motor vehicle operating in a jurisdiction must be charged the same rate); auditing for fuel tax purposes to be performed by the base jurisdiction; records are to be retained for 4 years; the penalty for the late payment of a fuel tax is 10% of the tax due or $50 whichever is greater; bonding requirements only for those carriers who have presented a problem of some sort; and licenses and decals to be issued to each motor carrier operating qualified motor vehicles.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address the imposition and collection of fuel taxes on motor carriers which operate exclusively in intrastate commerce. The administrative regulation addressed those motor carriers as well as the motor carriers which operate in interstate commerce.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Equal Protection Clause of the Constitution requires that entities which are essentially the same be treated the same. Therefore, the motor carriers operating in intra- and interstate commerce must be treated the same.

CABINET FOR HEALTH SERVICES
Department for Mental Health
and Mental Retardation Services
(New Administrative Regulation)

908 KAR 1:340. Narcotic treatment programs.

RELATES TO: KRS Chapter 222, 21 CFR Parts 291, 1301

STATUTORY AUTHORITY: KRS 194.050, 222.231, 21 CFR Parts 291, 1301, EO 95-79

NECESSITY AND FUNCTION: KRS 194.050 and 222.231 authorize the Cabinet for Health Services to establish guidelines and provide for the systematic evaluation of effectiveness of narcotic treatment programs. Executive Order 95-79 effective 12-28-95 reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation establishes the State Narcotic Authority with the Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services, and establishes licensure and operations requirements for narcotic treatment programs.

Section 1. Definitions. (1) "Administrative detoxification" means the detoxification from the approved controlled substance for the safety and well being of the client, other clients, and staff of the narcotic treatment program.

(2) "Approved controlled substance" means the drugs methadone (powdered methadone is not an approved controlled substance) or ORLAAM (brand of levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) used in the treatment of narcotic addiction.

(3) "CHS or cabinet" means the Cabinet For Health Services.

(4) "Client" means any individual who receives a controlled substance for the purpose of maintenance or detoxification in an NTP.

(5) "DEA" means the Drug Enforcement Administration.

(6) "Dose" means a one (1) day quantity of an approved controlled substance, administered on site, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection.

(7) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(8) "FDA" means the Food and Drug Administration.

(9) "Main program" means the location where all administrative and medical information related to the narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(10) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, urine screens) at the main location.

(11) "Narcotic detoxification program" means a program using approved controlled substances in continually reducing dosages over a period of time for the purpose of relieving or reducing withdrawal symptoms.

(12) "Narcotic maintenance" means a treatment procedure using an approved controlled substance over a period of time to relieve withdrawal symptoms, reduce narcotic craving, and permit normal functioning so that, in combination with rehabilitation services, clients can develop a productive lifestyle.

(13) "Narcotic treatment program" or "NTP" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(14) "Phase treatment" means the client's progress through treatment in a graduated sequence system.

(15) "Program sponsor" means a person or representative of an individual or entity who assumes responsibilities for the operation of a narcotic treatment program as well as being responsible for the on-

site conduct of all employees, and other persons providing services, and ensures that the program is operated in compliance with this administrative regulation.

(16) "Proposed program" means an individual or entity in the process of seeking a narcotic treatment license.

(17) "Public health director" means the director of the local public health department.

(18) "SNA" means the State Narcotic Authority.

(19) "Take-home dose" means a quantity of an approved controlled substance which the client is eligible to take off site.

(20) "Voluntary detoxification" means a client requested, physician supervised withdrawal from the approved controlled substance.

Section 2. State Narcotic Authority. The SNA shall be the Director, Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services.

Section 3. Alternative Distribution System. The SNA shall establish an alternative distribution system regarding the direct shipment of methadone and ORLAAM to approved treatment programs using narcotic drugs. An approved NTP shall submit a list of personnel, with a copy of the powers of attorney that authorizes them to sign order forms and receive shipments of controlled substances, pursuant to 21 CFR 1305.03, 1305.04, 1305.07, to the Hazelwood Center. Programs may not designate staff other than a physician, registered nurse, licensed practical nurse, or pharmacist to sign for or receive shipments of controlled substances. Programs shall submit a completed federal form 222 to Hazelwood Center, 1800 Bluegrass Avenue, Louisville, Kentucky 40202 to obtain methadone or ORLAAM.

Section 4. Application to Operate a NTP. (1) A proposed program desiring to operate a NTP shall meet the requirements of this administrative regulation, and shall be licensed in accordance with 908 KAR 1:150 through 1:260 prior to application.

(2) The proposed program shall submit each staff member's, including the program sponsor, administrator, and all other personnel, profile and resume of educational and professional experience, including Social Security numbers and date of birth.

(a) If the program is a corporation or partnership, the application shall list all partners' and officers' names, addresses, and Social Security numbers.

(b) Failure to provide this information shall disqualify the application for further review.

(3) The proposed program shall submit or cause to be submitted on its behalf to the SNA a written protocol which shall serve as an application for licensure by the SNA. This protocol shall include the following:

(a) A plan of operation;

(b) A description of the geographic area to be served by the program;

(c) Population and area to be served;

(d) The estimated number of persons, in the described area, addicted to heroin or other morphine-like drugs and an explanation of the basis of the estimate;

(e) The estimated number of persons in the described area addicted to heroin or other morphine-like drugs presently under treatment in methadone and other treatment programs;

(f) The number of patients in regular treatment, projected rate of intake, and factors controlling projected intake;

(g) Program goal;

(h) Plan for evaluation;

(i) Memoranda of agreement which reflect supportive services from the administrative head of the following agencies:

1. Hospitals;
2. Local law enforcement including jails;
3. Community mental health and mental retardation agencies;
4. Private, for-profit alcohol and drug services and publicly funded alcohol and drug services;
5. Department of Vocational Rehabilitation Services; and
6. Private, for-profit mental health counseling services;

(j) Client identification system;

(k) System to prevent client's multiple program registration;

(l) Organizational chart which includes the persons responsible for the program;

(m) First year budget, which list available, pending, or projected funds;

(n) Copies of letters verifying funding;

(o) Schedule of the amount of the client fees;

(p) Duties and responsibilities of each staff member and the relationship between the staffing pattern and the treatment goals;

(q) Duties and responsibilities of the medical director;

(r) Plan for delegation of the medical director's duties, if appropriate;

(s) Training and experience of counselors and therapists;

(t) Counselor and therapist caseload;

(u) Procedures and criteria for client selection;

(v) Program rules and instructions;

(w) Facility description;

(x) Initial dosage levels;

(y) Daily dosage levels;

(z) Operational procedures including the procedures to be used in inventory maintenance and daily dosing schedules;

(aa) Procedures, or documented efforts made, which provide for cooperation with local jails and hospitals for either withdrawal or maintenance while in custody or hospitalized in the event of client incarceration or hospitalization;

(bb) Procedures in the event of state or national or manmade emergency or disaster.

(cc) Urinalysis procedures which utilize random selection or unannounced collection;

(dd) Procedures for scheduled termination, voluntary termination, and involuntary termination for cause, including reasons for termination for cause;

(ee) Fair hearing procedures for client grievances;

(ff) Copies of all forms developed and to be used by the proposed NTP;

(gg) Facility address and dimensions;

(hh) Amount of space devoted to methadone treatment, including waiting, counseling, dispensing, and storage areas;

(ii) Days and hours of dispensing;

(jj) Days and hours of other program services;

(kk) Type of services provided and the hours of use, if the facility is also used for purposes other than narcotic treatment; and

(ll) Diagram of the facility housing the NTP and an accompanying narrative which describes client flow. The diagram and narrative shall specify:

1. Waiting areas;
2. Office space;
3. Dispensing area;
4. Urine collection locations;
5. Record storage area;
6. Parking or transportation access; and
7. The relation of the services to the total facility.

(4) A protocol proposing a new program or a complete revision of the protocol of an approved program shall be submitted to the SNA.

(5) The proposed program shall submit written policies and procedures in accordance with Sections 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 of this administrative regulation.

Section 5. SNA Application Review Process. (1) The SNA shall review the application materials within thirty (30) working days for the following:

(a) Criminal convictions by all individuals or entities involved with

the proposed program within the past five (5) years, including violations of controlled substance laws and administrative regulations;

(b) Suspension or revocation of any FDA, DEA, state narcotic licenses, or professional licenses in the past five (5) years of any staff member including the medical director, registered nurses, licensed practical nurses and registered pharmacist; and

(c) The written monitoring reports and compliance reports of other NTPs currently operated by the applicant or by any corporation or partnership with whom the applicant has been associated in the past five (5) years. These reports shall be obtained from the DEA and FDA agents, medical licensing boards, pharmacy licensing boards, nursing licensing boards, and from other SNAs.

(2) The SNA shall not grant an application to operate a NTP to any applicant that has employed staff or, if applicant is a corporation or partnership, any officer of the corporation or member of the partnership who was convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years.

(3) The SNA shall work in collaboration with the DEA and FDA in reviewing the proposed application. Before any narcotic license shall be issued to the proposed program, the SNA, the DEA office, and the FDA office shall all agree.

(4) The SNA shall conduct an on-site inspection to review the proposed program and interview the medical director, program sponsor and dosing staff.

(5) The SNA shall not approve any application for a NTP to any entity that poses a risk to the health and safety of the public based on a history of noncompliance with state and federal regulations as verified by the DEA or FDA or state licensure agencies in states in which the entity currently legally operates.

(6) The SNA shall respond in writing, within ten (10) working days, to the proposed program upon receipt of all reports and documents from the applicant and all agencies involved.

(7) If the application to operate the NTP is approved the SNA shall, within thirty (30) working days of the completion of the review process:

(a) Issue a letter which shall indicate the approval to operate a NTP, the DEA license number, the FDA license number, and the expiration date of the license to operate; and

(b) Assign a facility responsible for the distribution of the approved controlled substances to be used in the NTP.

(8) If the application to operate a NTP is not approved within thirty (30) working days, the SNA shall respond in writing citing the deficiencies, the requirements and time frames for taking corrective actions to make the program licensable.

(9) The proposed program shall provide a plan of correction for deficiencies cited within fifteen (15) working days from date of receipt of the written deficiencies.

Section 6. Organization and Administration Policies. (1) NTPs shall develop policies and procedures that include:

(a) Waiting list criteria;

(b) Criteria for the use of ORLAAM (levomethadyl acetate hydochloride; levo-alpha-acetylmethadol hydrochloride) for clients needing or desiring take-home doses, but who do not meet eligibility requirements for take-home doses;

(c) Policies pertaining to the preparation and labeling of client doses which shall include:

1. The quantity of approved controlled substances that is indicated on the client's narcotic sheet within the medical record;

2. Assurance that doses shall be labeled with the exact quantity of narcotic drug ordered;

3. Take-home doses shall be formulated in such a manner that shall reduce the likelihood of injecting the dose;

4. Policies that permit clients to know their dose level; and

5. Policies that shall provide for the packaging of take-home doses of the approved controlled substances in containers that meet the requirements of 15 USC 1471. The label of the doses shall include the name of the program, address and telephone number of the program, name of the controlled substance, name of the client, the name of the physician ordering the substance, and the quantity of the controlled substance, unless the client has requested in writing that the quantity of the substance not be revealed to them.

(2) The program policies shall indicate that the medical director or program physician at the individual NTP is in charge of all dose adjustments.

(3) The program policies shall indicate that dosing personnel do not alter client doses without the medical director or program physician's order.

(4) Verbal dosing orders shall be signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(5) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program physician.

(6) Detoxification policies for voluntary and administrative detoxification shall be in compliance with 21 CFR 291.505(d)(8) and (9), i.e.: short-term (thirty (30) days or less), or long-term (more than thirty (30) days and as much as 180 days).

(7) Urine collection policies for drug screening purposes shall be developed to assure absence of falsification. Each sample shall be analyzed for the following drugs:

(a) Methadone;

(b) Cocaine;

(c) Opiates;

(d) Amphetamines;

(e) Barbiturates;

(f) Tetrahydrocannabinol;

(g) Benzodiazepines; and

(h) Any other drug(s) that has been determined by the NTP or the SNA to be abused in that program's locality or any other drugs that may have been abused by the client.

(8) NTPs shall have policies that prohibit procedures for offering a bounty, monetary or equipment or merchandise reward, or free services for individuals in exchange for recruitment of new clients into the program.

(9) NTPs shall assure compliance with the system of treatment phases outlined in Section 11 of this administrative regulation.

(10) NTPs shall develop quality assurance policies to assure that services provided are achieving beneficial effects for the clients using the services.

(11) Urine drug screens shall be reviewed by the treatment team monthly to determine client's reduction in the use of unauthorized medications.

(12) Controlled substance medications shall be considered unapproved usage if they are being used by the client without a valid prescription.

(13) A urine drug screen negative for the approved controlled substances allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(14) The NTP shall assure that urine drug screens are not used as the sole criteria for dismissing clients from the program.

(15) NTPs shall develop quality assurance procedures to determine the adequacy of the NTP's organization and service delivery. The assessment shall:

(a) Examine the content of the NTP's organizational and administrative structure and shall assess the following:

1. Availability of services to include counseling services;

2. Availability of physical health services to clients;

3. Vocational training available to clients;

4. Legal assistance or referral, if indicated for the client;

5. Americans With Disabilities Act (ADA) defined accessibility in the on-site programs to the clients;

6. Quality assurance of the program structure; and

7. Continuity of services and care.

(b) Be conducted semiannually by the clinical supervisor, medical director, program sponsor, and the dosing nurse supervisor;

(c) Evaluate the following:

1. Appropriateness of the services delivered;

2. Completeness of documentation in client records;

3. Quality of and participation in staff training programs; and

4. Status of licenses and certification documents.

(16) All NTPs shall be open for dosing services seven (7) days a week with the exception of the following holidays:

(a) New Years Day, January 1;

(b) Presidents Day;

(c) Martin Luther King Day;

(d) Memorial Day, last Monday in May;

(e) Independence Day, July 4;

(f) Labor Day, first Monday in September;

(g) Thanksgiving Day, fourth Thursday in November; and

(h) Christmas Day, December 25.

Section 7. Personnel Policies. (1) The NTP shall have a program sponsor who shall:

(a) Assure that KRS 222.231, 908 KAR 1:150 through 1:260, 21 CFR 291.505(g), 1301.76, KRS Chapter 218A, 902 KAR 55:010 to 55:095 and this administrative regulation, are followed by the NTP;

(b) Have two (2) years documented experience in the treatment of addictions. The program sponsor shall be a certified chemical dependency counselor recognized by the Kentucky Credentialing Board, or a physician, nurse, physician assistant, or nurse practitioner certified by the respective licensing subspecialty, or shall have a minimum of a masters degree in the field of addictions or related field; and

(c) Assure that clients:

1. Receive and sign written information describing all facets of the program in a manner that the client understands;

2. Have had the contents of the "Consent to Treatment with an Approved Narcotic Drug", Form FDA 2635 (7/93), communicated to them and voluntarily sign the consent to treatment;

3. Under eighteen (18) years of age, have parents or legal guardians of nonemancipated minors sign the consent to treatment;

4. Receive information on communicable diseases at admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years. Communicable diseases shall include tuberculosis, hepatitis, sexually transmitted diseases, and HIV/AIDS; and

5. Receive HIV/AIDS pretest, posttest counseling, and provide for voluntary HIV testing at admission or when clinically indicated thereafter.

(2) The program sponsor shall assure:

(a) That professional staff in the NTP shall maintain current credentials and that professional skills pertinent to their job descriptions shall be updated annually;

(b) That the laboratory performing the testing required under this administrative regulation is approved by the SNA, is certified by the Health Care Financing Administration as a CLIA (Clinical Laboratory Improvement Act-1988) certified laboratory, has a protocol in place that assures the integrity of the chain of custody for all urine drug tests, and an assurance that the initial test and confirmatory tests for drugs tested on behalf of the program meets the following standards;

1. Marijuana metabolites - initial screen 50ng/ml, confirmation test 15ng/ml;

2. Cocaine metabolites - initial screen 300ng/ml, confirmation test 150ng/ml;

3. Opiates metabolites - initial screen 300ng/ml, confirmation test 300ng/ml;

4. Amphetamines - initial screen 1000ng/ml, confirmation test of amphetamine 500ng/ml, and methamphetamine confirmation test 500ng/ml;

5. Barbiturates - initial screen 300ng/ml, confirmation test 300ng/ml; and

6. Benzodiazepines - initial screen 300ng/ml, confirmation test 300ng/ml.

(c) That drug test results shall not be used as the sole criteria for administratively detoxifying a client from the NTP;

(d) That when drug testing results are used, presumptive laboratory results shall be distinguished from results that are definitive;

(e) That urine samples used for drug screening purposes shall be coded in a manner that ensures client confidentiality;

(f) That client attendance shall not be revealed to any person or agency without the specific written authorization of the client, or a valid court order.

(3) NTPs shall have a medical director who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(4) NTPs may have a program physician who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(5) The medical director may be the program physician.

(6) There shall be one (1) medical director or program physician on staff for every 300 clients, or fraction thereof, enrolled in a NTP.

(7) The responsibilities of the medical director or program physician(s) shall include:

(a) Assuring there is evidence of physiologic dependence on narcotics for all clients admitted to the NTP;

(b) Assuring a history of addiction, or that any exceptions to admissions criteria are approved by the SNA and documented in the client's record before the first dose is administered;

(c) Assuring that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

(d) Assuring that appropriate laboratory studies have been performed and have a documented review by the medical director or program physician;

(e) Documenting, signing, or countersigning all medical orders, within forty-eight (48) hours, that include the first dose of narcotic drug or other approved medications;

(f) Documenting, signing, or countersigning all subsequent

medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;

(g) Assuring that information on all communicable diseases is communicated to all clients as required; and

(h) Assuring that a review and cosignatures of all telephone or other verbal orders are documented within forty-eight (48) hours of the order.

(8) The medical director or program physician at the NTP shall:

(a) Supervise clinical staff responsible for preparation and administering of the approved controlled substances; and

(b) Assure compliance with program procedures and administrative regulations;

(9) The medical director or program physician shall order all doses and all increases or decreases of doses of medications or drugs for the client, through the NTP.

(10) Any verbal orders shall be given to nursing or pharmacy staff and shall be cosigned by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(11) The medical director or program physician shall review all laboratory testing results required by the FDA, SNA, and testing indicated by the client's clinical record. Any specific additional laboratory testing shall be ordered by the medical director or program physician.

(12) The medical director or program physician, in determining the client's take-home medications, shall take into consideration the items addressed in 21 CFR 291.505(d)(6)(C)(iv)(B) and shall comply with Sections 10, 11, 12, 13 and 16 of this administrative regulation.

(13) NTPs shall provide dosing staff in sufficient numbers to meet the needs of the clients during dosing hours. Dosing staff shall:

(a) Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

(b) Not be dually assigned as primary client counselors.

(14) Programs shall provide counselors who shall have, at a minimum, a bachelors degree in a human services related field and a chemical dependency counselor certification from the Kentucky Certification Board of Chemical Dependency Professionals, Inc. or be actively engaged in the certification process.

(15) There shall be one (1) counselor for every forty (40) clients in the program.

Section 8. Physical Plant. (1) The building used for the NTP shall meet requirements in 21 CFR 1301.74(j) and shall have space for the following operations:

(a) The waiting area shall be large enough to accommodate the clients arriving for services.

(b) The waiting area shall be separated from the dosing area to permit each client privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary, shall accommodate the dosing staff, and shall contain the following:

1. A stainless steel sink;
2. Hot and cold running water;
3. A refrigerator for dosing supplies; and
4. Pill-counting trays if tablets are being used.

(2) Security and floor plan of the dosing area may be unique to each program, but shall conform to the requirements in 21 CFR 1301.72.

(3) The NTP shall make arrangements for the facility to have two (2) restrooms which shall be handicapped accessible.

(4) The NTP shall assure that restrooms available to clients to provide urine specimens are secure, private, clean, and sanitary.

(5) The physical plant shall meet building, fire, safety, and health standards specified by state and local government laws and regulations.

(6) The physical plant shall be secured by a local security company approved by the DEA and the SNA.

(7) There shall be a minimum of two (2) panic buttons or similar devices for each NTP, one (1) in the reception area, and one (1) in the dosing area.

(8) There shall be a telephone with an outside line accessible in the dosing area.

(9) Internal security may be unique to each NTP and shall meet the requirements of 21 CFR 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA Office and the SNA.

(10) Parking space at the clinic site shall be adequate to accommodate the maximum number of clients expected to be at the clinic site at one (1) time or have specific appointment schedules to prevent the influx of clients that would be disruptive or unsafe to the surrounding community.

(11) The NTP shall comply with all local zoning and ordinance laws and requirements.

Section 9. Security and Control. (1) The security and control segment of the NTP's assessment procedure shall be conducted quarterly by the program sponsor and dosing nurse supervisor or pharmacist who shall assure that the requirements of 21 CFR 1304.28 are met. Other items to be evaluated shall include:

(a) Security of the narcotic safe and the building perimeter shall be checked with a security company.

(b) The safe shall be locked at all times while staff are not obtaining or restocking controlled substances.

(c) Inventory reconciliation shall be conducted and all reconciliation documents shall be retained by the program for five (5) years.

(d) Five (5) percent or more inventory discrepancies shall be reported to the SNA and the DEA offices within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for client doses.

(f) Any discrepancies shall be reported to the SNA, to the DEA and FDA, and the Department for Health Services' Office of Drug Control, using the DEA 1305.12 (12/85) "Report of Theft or Loss of Controlled Substances" form, within forty-eight (48) hours of the event.

(g) A system shall be devised to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

(h) Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform to 21 CFR 1304.28 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(2) Utilization and effectiveness of delivered services shall be reviewed by the program sponsor and medical director annually for the following:

(a) Treatment slot utilization and cost per slot;

(b) Staff-to-client ratio;

(c) Cost per counseling session; and

(d) Cost per client for other program services.

(3) NTPs shall maintain written policies to assure the confidentiality of all client records.

(4) Quarterly, the program sponsor shall review a ten (10) percent random sample of client records for the following information and assurances:

(a) Client signed the "Consent to Treatment with an Approved Narcotic Drug," Form FDA 2635 (7/93);

(b) Client signed a release of information form, developed by the NTP, which shall include:

1. Specific type of confidential information to be obtained or released; and

2. Specific dates that the release is to cover.

(c) When the program sponsor serves as a counselor then the medical director shall review ten (10) percent of the program sponsor's client records for the same information and assurances as cited above in paragraphs (a), (b)1 and 2 of this subsection.

(5) The NTP shall retain a copy of internal assessment docu-

ments on file, which shall be available for review by regulatory agencies for five (5) years.

(6) The NTP shall participate in the data collection system as addressed in 908 KAR 1:300.

Section 10. Admission and Readmission Policies. (1) The admitting physician for the NTP shall comply with the admission requirements of 21 CFR 291.505(d)(1).

(2)(a) Exceptions to the admission requirements shall be those cited in 21 CFR 291.505(d)(1)(C)(iii). Programs shall adhere to the following for pregnant clients:

(b) A program shall not admit as a client any person who is pregnant, nor shall any program continue to treat any client who becomes pregnant, unless and until the medical director or program physician first determines and documents in the client's record the following:

1. The client is medically able to participate in the program.

2. The client shall be in the care of a qualified physician for her pregnancy and the physician is informed of the client's participation in the program. For the purpose of this subsection, "qualified physician" means a physician trained in the field of obstetrics.

3. If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, the program physician shall refer any applicant who is pregnant or any admitted client who becomes pregnant to another physician for care during pregnancy and shall verify that she is actually under care of the physician to whom she was referred or another qualified physician.

4. In the case of a pregnant client, the medical director or program physician shall ensure that appropriate arrangements have been made for the addiction-related medical care of both the client and the child following the birth of the child.

5. Maintenance treatment dosage levels of pregnant clients shall be maintained at the lowest possible dosage level.

6. The program shall ensure that the following services are available for pregnant addicts and are a part of the treatment plan:

a. Periodic physician consultation at least monthly;

b. Nutritional counseling;

c. Parenting training including newborn care, handling, health, and safety; and

d. Weekly full drug screen urinalysis;

(3) When a client applies for admission to a NTP the client shall be required to sign a release of information that authorizes a program to release or solicit information regarding the client's status in the NTP to another NTP.

(4) A client who has received treatment and later voluntarily detoxified may be readmitted to a NTP without evidence to support findings of current physiologic dependence, up to two (2) years after discharge if the NTP attended is able to document prior treatment of six (6) months or more, and the admitting medical director or program physician finds readmission to the NTP to be medically justified.

(5) Any client seeking readmission to a NTP after being administratively detoxified shall wait thirty (30) days prior to applying for readmission.

(a) If a client has been administratively detoxified two (2) times during a twelve (12) month period the client shall wait sixty (60) days before applying for readmission.

(b) The medical director or program physician shall find readmission to the NTP medically justified.

Section 11. Treatment Protocol. NTPs shall comply with the following treatment phase system to achieve the goals of reduced health problems, reduced criminal activity, increased productivity, stabilization of family life and eventual drug free living.

(1) Entry phase. The first ninety (90) days of treatment all clients shall adhere to the following:

(a) Clients shall be dosed with methadone seven (7) days at the clinic site.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) Clients shall be provided HIV/AIDS education and provided or referred for HIV pretest counseling and voluntary HIV testing.

(d) Clients shall be oriented to appropriate twelve (12) step programs such as narcotics anonymous or alcoholics anonymous.

(e) During the entry phase the client shall provide an observed urine sample one (1) time per week on a random basis.

(f) There shall be documentation in the client record that treatment plans shall be reviewed and updated a minimum of every thirty (30) days for three (3) months, every ninety (90) days thereafter.

(g) The medical director or program physician shall sign the treatment plan.

(2) Phase one (1). In order for a client to enter phase one (1) the client shall not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for ninety (90) consecutive days.

(a) Once the client enters phase one (1) the client shall attend clinic six (6) times each week for observed ingestion of methadone and shall be eligible to receive a one (1) day take-home dose of methadone.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) The client shall provide an observed urine sample on a random basis at least weekly.

(d) Clients shall be encouraged to attend an appropriate twelve (12) step program.

(e) There shall be documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to his treatment plan.

(f) The medical director or program physician shall sign the treatment plan.

(3) Phase two (2). In order for the client to enter phase two (2) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 180 consecutive days;

(b) Be pursuing gainful employment or vocational training or attending school or be engaged in volunteer work, or be attending parenting classes if they are a parent at home with children. Clients with disabilities or other circumstances which might prohibit this requirement may submit a written wavier request to the SNA justifying specific reasons for the request;

(c) Have a treatment plan to meet any special needs, including disabilities;

(d) Attend clinic five (5) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(e) Provide an observed urine sample randomly on a monthly basis, or more frequently if their treatment plan requires;

(f) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(g) Be encouraged to attend appropriate self-help programs outside the clinic;

(h) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to the treatment plan; and

(i) Have their treatment plan signed by the medical director or program physician.

(4) Phase three (3). In order for the client to enter phase three (3) the client shall:

(a) Not have committed any program infractions (dirty urine

screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 270 consecutive days;

(b) Have met the same entry criteria requirements as noted in phase two (2);

(c) Attend clinic three (3) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(d) Provide an observed urine sample on a random basis, monthly, or more frequently if their treatment plan requires;

(e) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(f) Be encouraged to attend appropriate self-help groups outside clinic;

(g) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to their treatment plan; and

(h) Have their treatment plan signed by the medical director or program physician.

(5) Phase four (4). In order for the client to enter phase four (4), the client shall have successfully completed phase three (3) and adhered to the requirements of the maintenance treatment program for two (2) consecutive years.

(a) Clients shall be dosed at the clinic site two (2) days per week for observed ingestion of methadone and be eligible for three (3) take-home doses of methadone.

(b) The number of counseling sessions provided during this phase shall be based on the clinical judgement of the program physician and program staff.

(c) Requirements in the area of urine sample schedules, and treatment plan reviews remain the same as in subsection (4) of this section.

(d) Prior to successful completion of phase four (4), a plan shall be developed which shall assist the client toward a drug free treatment regimen for continued support.

(e) The medical director or program physician shall sign the treatment plan.

Section 12. Client Program Compliance. In order for a client to remain in a NTP and to successfully move through the treatment phases, clients shall be actively involved in the NTP by remaining in good standing at the clinic or risk being administratively detoxified. In those instances where clients have not complied with program policies:

(1) The client may be placed on a behavioral contract for a minimum of sixty (60) days during any individual program phase and shall lose all take-home dose privileges for sixty (60) days.

(2) If a client commits three (3) infractions, the medical director or program physician and staff may choose to move the client back in phases as part of the behavioral contract. The client shall lose all take-home privileges during the contract period.

(3) Following the commitment of any program infraction, the counseling staff shall assist the client in correcting the problem behavior and document this effort in the client's treatment plan.

(4) If the client continues to experience problems and breaks the behavioral contract, the client may be administratively detoxified based on the recommendation of the program physician and the program staff.

Section 13. Client Transfers. NTPs shall accept clients transferring from another program within the state, if:

(1) The client's medical director recommends and documents the reasons for transfer; and

(2) The client is in compliance with readmission policies for clients who have been administratively detoxified.

(3) In order for the client to transfer to another NTP, the following requirement shall be met:

(a) The NTP that client is leaving shall forward all relevant client records to the program where the client is transferring.

(b) Any client transferring shall have the medical directors recommendation for transfer and shall meet the admission criteria of this administrative regulation.

(c) Clients who are Kentucky residents and wish to transfer to another Kentucky-based program shall be reviewed by the new program's admission program physician or medical director on an individual basis to determine their placement on the receiving program's client listing. The review shall determine the client's need, program placement availability, and the circumstances for the transfer request.

(d) Clients who are not Kentucky residents shall transfer to a Kentucky program as a new admission or "Entry Phase" as noted in this administrative regulation, Section 11(1) of this administrative regulation, unless other phase levels are approved by the SNA.

Section 14. Client Appeal Procedures. Decisions regarding a client's treatment by staff shall be subject to appeal by the client. Each NTP shall:

(1) Develop an appeal procedure that shall be approved by the SNA; and

(2) Have procedures that include a provision that a central file of all client appeals be maintained at the NTP for review by the SNA.

Section 15. Program Waiver Process. A NTP may make an application to the SNA in order to seek waivers from any requirement of this administrative regulation.

(1) This application for a waiver shall:

(a) Be in the form of a letter to the SNA;

(b) Identify the specific sections of this administrative regulation for which a waiver is being sought; and

(c) Give the rationale for such a request.

(2) A copy of the waiver request and response shall become part of the client's permanent record, if applicable.

(3) Applications for waiver requests shall be mailed to: Kentucky State Narcotic Authority, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.

Section 16. Take-home Doses. (1) Under emergency conditions a program may issue fourteen (14) consecutive days of take-home doses without notification of FDA. The NTP shall notify the SNA and request, in writing, an exception to dosing procedures prior to administration of the first emergency dose. This request shall include:

(a) The number of take-home doses requested;

(b) The reason for the request; and

(c) The client's standing in program phases, adherence to program policies, and the total length of time the client has been enrolled at the NTP.

(2) The medical director or program physician may grant an exception to the criteria for take-home dosages for any of the following reasons subject to the limitations in this administrative regulation and written approval from the SNA which shall be filed in the client record:

(a) The client has a serious physical disability which would prevent frequent visits to the program facility.

(b) The client is subject to an exceptional circumstance such as acute illness, family crisis, or necessary travel, where hardship would result from requiring exact compliance with the step level schedule as noted in this administrative regulation. When a client must travel out of the program area, the medical director or program physician shall attempt to arrange for the client to receive his/her daily dosage at another program in lieu of increasing take-home dosages.

(c) The medical director or program physician shall not grant any exceptions during a calendar month which exceed three (3) exceptions or ten (10) percent of the number of patients enrolled in the

program on the last day of the previous month, whichever is greater.

(d) The medical director or program physician shall document in the client's record the granting of any exception and the facts justifying the exception. Each program shall also maintain a separate record for all exceptions granted.

(e) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(3) A NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) step level on the schedule for take-home dosages if the client's urinalysis results disclose the unauthorized presence of methadone, cocaine, opiates, amphetamines, barbiturates, tetrahydrocannabinol, benzodiazepines, and any other drug(s) that has been determined by the NTP or SNA to be abused in that NTP's locality or any other drug(s) that may have been abused by the client twice or more in a sixty (60) day period.

(4) A NTP shall restrict a client's take-home dosage partially, by moving the client back on the take-home dosage schedule, if the NTP concludes that the client is no longer a suitable candidate or risk for take-home privileges as presently scheduled.

(5) A NTP shall revoke a client's take-home privileges for not less than three (3) months and shall require the client to ingest each dosage at the facility for any of the following reasons:

(a) The client's urinalysis discloses an absence of methadone, or methadone metabolite, and the medical director confirms the accuracy of such analysis. This shall not be applicable to clients whose daily dosage is ten (10) milligrams or less.

(b) The client is discovered to be misusing methadone, as defined in paragraph (e)3 of this subsection.

(c) The client attempts to register in another NTP.

(d) The client alters or attempts to alter a urinalysis.

(e) The client is not satisfactorily adhering to the requirements of the NTP by the following:

1. The client has not complied with all the rules of the NTP.

2. There is indication that the client has repeatedly used drugs improperly.

3. There is indication, including appropriate urinalysis results, that the client is misusing methadone. Misuse of methadone includes sharing, giving away, selling, or trading one's methadone dosage, or not ingesting it in accordance with methadone maintenance treatment program rules.

4. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use.

5. The client is not participating in an educational, vocational, or home-making activity.

(6) A client whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

(a) Phase one (1) by satisfactory adherence for at least thirty (30) days.

(b) Phase two (2) by satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges.

(c) Phase three (3) by satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges.

(d) Phase four (4) by satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges.

(e) This section shall not be used to circumvent the requirements of this administrative regulation. No client shall be advanced to a phase level pursuant to this section unless he has previously been at that phase level after having satisfied the requirements of this administrative regulation.

(7) When the NTP fails to comply with the requirements in Sections 6, 7, 8, 9, 10, 11, 12, 13 or 16 of this administrative regulation, the SNA may order a NTP to suspend all or part of the take-home dosage program for a period of thirty (30) days. The SNA shall notify the NTP in writing outlining the reasons for the suspension prior to any suspension as follows:

(a) The NTP shall submit a plan of correction to the SNA within ten (10) days of receipt of the SNA notification.

(b) If the NTP does not make the corrections in the time specified due to circumstances approved by the SNA, but the NTP has responded within the ten (10) day time period, the SNA may extend the suspension for up to a second thirty (30) day period.

(c) If the NTP does not make the necessary corrections or does not submit an acceptable plan of correction with the SNA within the time frame specified in paragraph (a) of this subsection, the SNA shall suspend the NTP's take-home program until the necessary corrections have been made.

(d) If the NTP is determined by the SNA to not comply with Sections 6, 7, 8, 9, 11, 10, 11, 12, 13 or 16 of this administrative regulation and is serving clients who meet the requirements in Sections 10 and 11 of this administrative regulation, the SNA may restrict the NTP's take-home procedures to the provision of emergency take-homes according to the requirements of Section 16 of this administrative regulation. This restriction shall be in effect on a client-by-client basis until the NTP has taken corrective actions that bring the program into compliance with Sections 6, 7, 8, 9, 10, 11, 12, 13 and 16 of this administrative regulation.

(8) Maintenance treatment shall be discontinued within two (2) continuous years after the treatment is begun unless, based upon the clinical judgement of the medical director or program physician and staff which shall be recorded in the client's record by the medical director or program physician, the client's status indicates that the treatment should be continued for a longer period of time because discontinuance from treatment would lead to a return to opiate dependency.

(9) Client status relative to continued maintenance treatment shall be reevaluated at least annually after two (2) continuous years of maintenance treatment and documented in the client's record by the medical director or program physician or maintenance treatment shall be terminated.

(10) Documentation of the justification for continued maintenance treatment required by this administrative regulation shall indicate the client's progress, or lack thereof, and future expectations as required by this administrative regulation.

(11) Each NTP shall submit in its protocol a specific plan for schedule termination of maintenance treatment indicating an average period of maintenance before the scheduled termination.

(12) The termination plan shall include dosage schedules, information on counseling, and any other patient support which will be provided during withdrawal.

(13) Scheduled withdrawal shall be under the immediate direction of the medical director or program physician and shall be individualized.

(14) A client may voluntarily terminate participation in a NTP even though termination may be against the advice of the NTP.

(15) If the medical director or program physician determines that the client's continued participation in the program creates a physically threatening situation for the staff or other clients, the client's participation may be terminated immediately.

(16) A client's participation in a NTP may be involuntarily terminated for cause.

(17) If a NTP utilizes disciplinary proceedings which include involuntary termination for cause, the program shall include in its protocol reasons and procedures for involuntarily terminating a client's participation in the program. The procedures shall provide for:

(a) Explanation to the client of when participation may be terminated for cause;

(b) Client notification of termination;

(c) Client's right to hearing; and

(d) Client's right to representation.

(18) If the NTP elects not to terminate for cause, the protocol shall state that clients shall not be involuntarily terminated for cause except as provided in subsection (15) of this section.

(19) Except as noted in subsection (15) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

(a) The medical director or program physician deems it clinically necessary to terminate participation sooner and documents why in the client's record; or

(b) The client requests in writing a shorter termination period.

Section 17. Client Rights. In addition to the client rights cited in 908 KAR 1:200, Section 1, the following shall apply:

(1) Clients shall have the right to voluntary detoxification from the NTP.

(2) The client rights shall be posted in conspicuous places in the facility.

(3) The client rights shall be signed by the individual client attesting the client rights have been explained in such a manner that they are understood. This signed copy shall be maintained in the client's permanent medical record.

(4) Decisions regarding a client's treatment by staff may be subject to appeal by the client.

(5) Each NTP shall develop an appeal procedure that shall be approved by the SNA and shall include the following:

(a) Each appeal procedure shall contain a detailed description of the NTP's pretermination fair hearing procedure. The appeal procedure shall provide that a client has a right to a pretermination fair hearing in all cases of involuntary termination from the program for cause where continued participation in the program does not create a physically threatening situation for staff or others clients. The procedure shall require:

1. Identification of reasons for termination, as stated in the program rules, which may include:

a. Polydrug abuse;

b. Diversion of methadone;

c. Violence or threat of violence to program staff or other clients in the program; or

d. Multiple registration.

2. Written notification to the client of pending termination, containing:

a. Reasons for termination; and

b. Explanation of right to pretermination fair hearing, which shall explain to the client that rights shall be exercised within forty-eight (48) hours of written notice.

3. Provision for continuance of client's treatment status pending decision upon hearing;

4. Explanation of the client's rights during the hearing to:

a. Be represented at the hearing by a person or attorney of their choice;

b. Call witnesses on their behalf, who need not be under oath; and

c. Examine witnesses presented by the NTP.

5. Release of medical information in the client's file to the client or the client's representative at least forty-eight (48) hours prior to the hearing;

a. Medical information requests by the client shall be in the form of a signed consent to release of information.

b. Medical information to be released to the client or client's representative shall be provided by the physician in charge of the client.

(b) The appeal procedure shall state whether the client is entitled to a hearing before a panel or before a single hearing officer. If the procedure states that the client is entitled to a hearing before a panel, a single hearing officer may not be substituted for the panel without the consent of the client. In the case of a hearing before a panel, a majority vote of the panel shall be necessary to terminate a person from the NTP.

(c) The NTP shall select the hearing officer or panel from impartial persons not directly involved with the client's care.

(d) A hearing shall be scheduled within seven (7) working days from the time the client requests a hearing.

(e) Unless the program procedures require a higher standard of proof, a client's participation in a program shall be terminated for cause only after the hearing officer or panel finds by a preponderance of the evidence presented that the reason stated in the notice justifies termination.

(f) The hearing officer or panel shall render a decision not later than the first working day following the hearing. The NTP shall keep a permanent record of the proceeding. The permanent record of the proceedings may be a tape recording. The decision shall be made in writing and shall be based solely on the evidence presented at the hearing. The decision shall include a summary of the proceedings and the formal findings and conclusions of the hearing officer or panel.

1. A copy of the hearing decision shall be provided to the client.

2. Copies of all written materials, including all evidence introduced at the hearing, shall be retained for one (1) year.

(g) A client may appeal an adverse action of a hearing officer or panel by the following:

1. The client may appeal the decision by filing an appeal with the Office of the Secretary, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) working days of the decision.

2. The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(6) All client appeals shall be maintained at the NTP for review by the SNA for two (2) years.

Section 18. Protocol for the Change of a NTP Location and the Protocol for Establishment of a Medication Station. The protocol shall be current, detailed, specific, and complete to permit evaluation by the SNA and to provide a basis for compliance inspections or surveys.

(1) If a NTP voluntarily decides to change its location or establish a medication station, the program shall notify, in writing, the DEA, FDA, the SNA and the Division of Licensing and Regulation within the cabinet within ninety (90) days of the proposed relocation. The written request to relocate shall include the following information:

(a) The reason for the relocation;

(b) The relocation site;

(c) The proposed date of the relocation;

(d) Indicate any program changes that may occur with the relocation; and

(e) If the NTP is within ninety (90) miles of the original site, the NTP shall provide the following:

1. Any dosing procedural changes; and

2. Any drug distribution problems which may occur due to the relocation.

(f) A medication station may be opened no closer than forty-five (45) miles and no further than ninety (90) miles to the main NTP.

1. The medication station shall obtain its supply of approved controlled substance from the stocks of the main NTP.

2. The medication station shall provide the following services:

a. Dosing; and

b. Urine screen collection.

3. The program sponsor shall develop a system to prevent clients from dosing at the main NTP and the medication station.

4. Any services provided at the medication station other than those listed above shall have prior approval by the FDA and SNA.

(2) The FDA, the DEA, and the SNA shall agree that the NTP may establish a medication station or relocate to the proposed relocation site. Written approval shall be forwarded to the NTP.

(3) If a NTP voluntarily decides to close its operation, it shall notify the SNA, the DEA, FDA and the Division of Licensing and Regulation within ninety (90) days before the planned closure of the program.

Section 19. Monitoring of NTPs. (1) The SNA shall monitor NTPs to assure the health and safety of program clients and the protection of the community at large. Monitoring visits shall be conducted annually, or more frequently if indicated. The SNA may:

(a) Discontinue all take-home doses of any approved controlled substance used in narcotic treatment and detoxification, on a statewide or program basis; or

(b) Discontinue the utilization of any drug approved for use in narcotic treatment programs.

(2) Focused, unannounced monitoring visits may be conducted more frequently and may occur in conjunction with the FDA and the DEA.

(3) Monitoring shall include:

(a) Inspection of the NTP licensing status;

(b) Inspection of the status of all applicable staff licenses and certificates;

(c) Inspection of the status of the NTP'S FDA, DEA, and state licenses;

(d) Inspection of the NTP's security which shall include:

1. Building security, perimeter and internal; and

2. Security of staff procedures in receipt of narcotic drug, storage of narcotic drug, and handling of the drug in preparation and dosing functions;

(e) Inspection of the records maintenance, the inventory control procedures, and the internal inventory reconciliation procedures;

(f) Inspection of the procedures the program has in place to reduce the likelihood of drug diversion by program clients and staff; and

(g) A random sample of doses prepared for administration may be pulled for quantitative analysis and the SNA shall submit to the program sponsor a receipt for any doses taken for analysis.

(4) Client records shall be reviewed for the following:

(a) Client signed consent to treatment with a controlled substance before the first dose was administered;

(b) Conformity with 21 CFR 291.505(d)(3)(i) requirements for minimum medical evaluations;

(c) Conformity with 21 CFR 291.505(d)(2)(ii), Sections 6(7) and 11(1)(e), (2)(c), (3)(e), (4)(d) of this administrative regulation for urine drug screening requirements;

(d) Conformity with client record that when the urine drug screen is positive for use of unapproved drugs, or is negative for the approved controlled substance, the client is counseled and suitable therapeutic action is taken by the treatment team, and the client's take-home doses have been discontinued for sixty (60) days. However, the urine drug screen shall not be used as the sole or primary reason for dismissing the client from the NTP; and

(e) Treatment plans have been developed and have been signed by the medical director or program physician in accordance with this administrative regulation;

(f) All physician orders for medications, doses, and dose changes and other treatments have been signed by the medical director or program physician within forty-eight (48) hours of the order's receipt;

(g) No medications are administered without the physician's orders;

(h) The SNA shall monitor for all other FDA, DEA, or SNA administrative regulations; and

(i) Records shall be reviewed for compliance with all treatment phases and waiver requests and approvals.

Section 20. Penalties. Penalties may be issued by the SNA to NTPs that have violated FDA and DEA requirements, and this administrative regulation as follows:

(1) When a monitoring visit reveals regulatory violations, the SNA shall, within ten (10) working days issue a written report, which also shall be submitted to the FDA and DEA, with a time frame of thirty (30) days for the NTP to submit a plan of corrective action.

(2) If a plan of corrective action has been submitted within the thirty (30) days and is acceptable, the SNA shall notify the NTP in writing.

(3) A follow-up visit to verify that corrective action has been made may be performed by the SNA.

(4) If the NTP has not filed a plan of corrective action within thirty (30) days after receipt of the report, the NTP shall be notified that its license shall be suspended for a period not to exceed six (6) months or revoked.

(5) Upon notification of suspension or revocation, the NTP may appeal the suspension or revocation in accordance with Section 21 of this administrative regulation.

(6) The SNA shall immediately suspend or revoke any narcotic treatment license in cases of emergencies affecting the health and safety of the client population or the community as a whole.

(7) The grounds which justify the immediate suspension or revocation of a license shall be as follows:

(a) Take-home doses that fall outside this administrative regulation without specific FDA, DEA, or SNA approval prior to issuance of the take-home dose;

(b) Labeling or dosing narcotic drug with a concentration that differs from the actual concentration in the container;

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the administrative regulations;

(d) Discrepancies in the inventory reconciliation greater than five (5) percent;

(e) Continued dosing of clients prior to completion of the intake procedures, including physical exam, except under the most unusual emergency circumstances, which shall be recorded in the client's permanent record;

(f) Evidence in the client's record that the physician is not in control of the client's treatment;

(g) Consistent dosing of clients before the consent to treatment with controlled substances has been signed by the client;

(h) Consistent failure to conduct the required urine drug screening procedures on all drugs listed in Section 6(7) of this administrative regulation;

(i) Failure to comply with Section 8(5) of this administrative regulation; and

(j) Revocation of licensure pursuant to 908 KAR 1:150 through 1:260.

(8) The SNA shall notify the FDA monitor, DEA, and the Department for Health Services Office of Drug Control at the time revocation or suspension is taken in accordance with subsection (4) of this section.

(9) Except in cases of emergencies affecting the health and safety of the client population or the community as a whole, an appeal shall stay any decision to suspend or revoke a license to operate pending final decision of the secretary.

Section 21. Appeals. If the SNA takes action to deny, suspend, or revoke a NTP license, the SNA shall notify the NTP in writing stating the reasons for the adverse actions and the NTP's right to appeal.

(1) If the NTP believes an action by the SNA is unfair, without reason, or unwarranted, the NTP may appeal the action in writing to the Secretary, Cabinet for Health Services, Fourth (4th) Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receipt of notice of action from the SNA.

(2) Upon receipt of the appeal, the secretary, or his designee, shall notify the NTP in writing within fifteen (15) days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(4) Based upon the record and upon the information obtained at

the hearing, the hearing officer shall affirm or overturn the initial decision of the negative action. The decision of the hearing officer shall be final. The NTP shall be notified in writing of the decision of the hearing officer.

(5) If a NTP, whose license has been suspended or revoked pursuant to Section 20(6) and (7) of this administrative regulation, requests a hearing, the cabinet shall conduct the hearing within five (5) working days of receipt of the request from the NTP. The hearing may be continued at the request of the NTP.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the client population or the community as a whole.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, the NTP shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the client population or the community as a whole, the license of the NTP shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

(6) If suspension or revocation of the license is upheld, the secretary's, or his designee's, notification shall specify the date by which the NTP shall close.

(7) A NTP that continues to operate after the closing date established by the secretary shall be subject to legal action by the cabinet as provided by law.

Section 22. Material Incorporated by Reference. (1) "Consent to Treatment with an Approved Narcotic Drug" form FDA 2635 (7/93); "Report of Theft or Loss of Controlled Substances" form DEA 1305.12 (12/85); U.S. Official Order Forms-Schedules I & II DEA form 222 (10/92) are hereby incorporated by reference.

(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 23. Compliance for Currently Operating NTPs. NTPs currently operating at the time this administrative regulation becomes effective shall have ninety (90) days to come into compliance with this administrative regulation.

ELIZABETH REHM WACHTEL, PH.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: May 14, 1996

FILED WITH LRC: May 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for Friday, June 21, 1996 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be canceled unless interested persons notify the following office in writing by Sunday, June 16, 1996 of the desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Cabinet for Health Services, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: All programs who offer an approved controlled substance as a narcotic treatment modality.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comments have been received. It was stated that it may be difficult to hire and retain licensed and certified staff.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented to the extent from the public comments received: Public comments have been received. Hiring licensed and certified staff may precipitate an increase in the cost of doing business.

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

1. First year following implementation: Compliance with DEA and FDA Standards, quarterly reporting and standard recordkeeping will be required

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

(3) Effects on the promulgating administrative body: Reviewing for compliance and recordkeeping for all narcotic treatment programs.

(a) Direct and indirect cost or savings:

1. First year: No additional direct or indirect costs or savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reviewing for compliance and recordkeeping for all NTPs.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds shall be used to implement the enforcement of this administrative regulation.

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

(a) Geographic area in which administrative regulation will be implemented: A public hearing was held on March 28, 1996 and no comments were made about this issue.

(b) Kentucky: A public hearing was held on March 28, 1996 and no comments were made about this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because they are not available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: The benefits to this administrative regulation include the reduction of AIDs and HIV among the intravenous drug using population in Kentucky, as well as establishing greater consistency in program operation policies across narcotic treatment programs, with reduction in diversion of program sponsored approved controlled substances which has been seen to increase law enforcement demands and the deaths of clients and nonclients in other states.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, the spread of AIDs and other infectious diseases among the intravenous drug using population may increase across Kentucky, as well as the breakdown in consistency of program operations of narcotic treatment programs, and the increase in the need for law enforcement oversight.

(c) If detrimental effect would result, explain detrimental effect: Maintenance and detoxification treatment would not be adequately regulated in the Commonwealth.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied (Explain why tiering was or was not used) Tiering was not used since the regulation will be applied in

a like manner for all individuals or entities affected by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 CFR Parts 291 and 1301.

2. State compliance standards. Establishes the State Narcotic Authority; outlines the state alternative distribution system for controlled substance used in the treatment of narcotic addiction; outlines the application procedures to operate a narcotic maintenance program; outlines the organization and administration policies; outlines the programs personnel policies; outlines the programs physical plant requirements; outlines the programs security and control procedures; outlines the programs admission and readmission policies; outlines the programs required treatment protocol; outlines the client rights; outlines the monitoring of the programs; outlines the penalties imposed by the state narcotic authority on programs for noncompliance of FDA, DEA, and state regulations; outlines the programs appeal procedures.

3. Minimum or uniform standards contained in the federal mandate. 21 CFR 291.501: Narcotic drugs in the maintenance treatment of narcotic addiction; 21 CFR 291.505: Conditions for the use of narcotic drugs; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts under Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970; 21 CFR 1301: Procedures governing the registration of manufacturers, distributors, and dispensers of controlled substances pursuant to Sections 1301 through 1304 of the Act (21 USC 821-824) are set forth generally by those sections and specifically by the sections of this part.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Section 1. State administrative regulation does not permit interim maintenance.

Section 3. The state alternative distribution system requires that approved NTPs obtain their supplies of approved controlled substances from a designated state operated facility.

Section 4. The federal regulation requires agencies to submit information regarding staff and security of the building and the drug. The state administrative regulation requires agencies to submit a detailed protocol which includes such information as letters of support from various agencies within the geographic location, first and subsequent years' budgets, detailed information about staffing qualifications and staffing patterns, criminal background checks, documentation of cooperative arrangements with local jails, hospitals, and community mental health centers. The agencies also must provide documentation of hearing procedures to guarantee the rights of clients.

Section 5. The SNA will not grant an application to any entity who has been convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years. The SNA will not grant an application to any entity who poses risk to health and safety of the public. The SNA will review past written compliance and monitoring reports from other SNAs, DEA, and FDA. This is stricter than the federal regulations.

Section 6. The federal regulation does not require criteria for the use of ORLAAM. The state administrative regulation requires agencies to submit policies which document how ORLAAM will be dispensed. In addition, agencies must submit documentation to assure compliance with the treatment phases listed in Section 10 of the state regulation. The federal requirements do not include treatment phases. NTPs are required to have stricter drug screening policies than the federal regulations require. Finally, the state administrative regulation requires clinics to be open seven (7) days a week, except for designated holidays. This is stricter than the federal regulations.

Section 7. The state administrative regulation requires stricter credentialing for the program sponsor, the medical director and/or the program physician, dosing personnel, and counseling staff. This is stricter than the federal regulations.

Section 8. The state administrative regulation requires that the dosing area be large enough to accommodate staff and equipment and the security of the drug. The federal regulation does not stipulate the size of the dosing area. The state administrative regulation also requires that the clinic have two (2) handicapped accessible restrooms which is not required by the federal regulation. Finally, the state administrative regulation requires adequate parking space for clients expected to be at the clinic at one time. This is stricter than the federal regulations.

Section 9. The state administrative regulation requires the agencies to quarterly evaluate the security and inventory reconciliation. The agencies must also assess the effectiveness of the utilization of the delivery services. The state administrative regulation requires that the staff to client ratio be 40 to 1, which is greater than the federal requirements. The agency must also annually review 10 percent of the client records for compliance. Finally, the state administrative regulation requires agencies to participate in the data collection system as addressed in 908 KAR 1:300. This is stricter than the federal regulations.

Section 10. The state administrative regulation requires the program to ensure that the following services are available for pregnant addicts and are a part of the treatment plan: parenting training including newborn care, health, and safety, weekly full drug screen urinalysis: any client seeking readmission to a NTP after being administratively detoxified shall wait 30 days prior to applying for readmission. If a client has been administratively detoxified 2 times during a 12 month period the client shall wait 60 days before applying for readmission. These requirements are stricter than the federal requirements.

Section 11. The state administrative regulation incorporates a 5-phase system of treatment that outlines the counseling, take-home dosages, urinalysis screening, orientation to 12-step programs, vocational rehabilitation, job training, behavioral contracts, infractions, transfer of clients from within and outside the state, client appeal procedures, waiver procedures, the use and misuse of the approved controlled substance, SNA's ability to suspend all take-home dosages, client record documentation of the continued use of the approved controlled substance after 2 years of treatment, client's voluntary termination from a NTP and client's involuntary termination from a NTP. These requirements are stricter than the federal requirements.

Section 12. The client program compliance requirements are stricter than those addressed in the federal requirements.

Section 13. NTP client transfer policies are stricter than the federal requirements. Those clients transferring from another state must start at the "Entry Phase" in Kentucky NTPs.

Section 14. This section requires policies and procedures for clients to use when filing an appeal or grievance when their rights have been violated. These requirements are stricter than the federal requirements.

Section 15. NTPs must request all waivers from the SNA prior to any action which is out of compliance with these administrative regulations.

Section 16. This section stipulates the take-home procedures that all NTPs must follow and is stricter than the federal regulations for take-home dosage procedures.

Section 17. All NTPs must develop an appeal procedure which protects the client's rights and includes pretermination fair hearing procedures. This is stricter than the federal requirements.

Section 18. This section stipulates what protocol an NTP must follow to change a NTP location, close a NTP, or establish a medication station. This is stricter than the federal regulations.

Section 19. This section stipulates the monitoring procedures to

be used by the SNA, time parameters of the on-site visits, reports issued as a result of the on-site visits, responses by the NTPs to any noncompliance issues cited as a result of the monitoring visit, and subsequent actions by the SNA. These requirements are stricter than the federal requirements.

Section 20. This section outlines the actions to be taken by the SNA when on-site visits reveal violations of federal and state regulations. These requirements are stricter than the federal requirements.

Section 21. This section outlines the specific rights of NTPs to appeal the decisions or citations of the SNA and further outlines the procedures for administrative hearings and other actions that may be in the interest of the NTP. The federal regulation includes no appeal process other than the through the courts.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. For all standards listed in number 4 above the justification for these stricter standards is: the SNA is seeking to protect the health and safety of the clients and staff of the NTPs and the health and safety of the community at large and to reduce the possible diversion of the approved controlled substances to the absolute minimum. The SNA also wishes to ensure the quality of treatment and program operations by the NTPs. Research of NTP operations in the states in the southeast region have revealed that minimal standards (FDA) have resulted in trafficking of the controlled substances outside the confines of the NTPs. Some of the trafficking has resulted in the death of nonaddicted persons, has reduced the credibility of narcotic treatment, and has resulted in the threat, real or imagined, of the removal of this treatment modality.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 6, 1996

The May meeting of the Administrative Regulation Review Subcommittee was held on Monday, May 6, 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 April 15, 1996 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman, Senator John David Preston; Representatives Jimmy Lee, James E. Bruce; Woody Allen.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Susan Wunderlich, Peggy Jones, Susan Eastman, Sharon Cantrell, Donna Little.

Guests: C. Joe Hutchinson, Kentucky Retirement Systems; Nathan Goldman, Board of Nursing; James W. Shaughnessy, Kentucky Spinal Cord and Head Injury Research Board; Roy A. Grimes, John Phillips, David C. Yancy, Tom Bennett, Department of Fish and Wildlife Resources; Diana Andrews, Division for Air Quality; Jack Damron, Brenda Priestly, Department of Corrections; Sandra Pullen, Transportation Cabinet; Ronda Tamme, Janet Banta, Office of Teacher Education and Certification; Sue Mahoney, Office of Education Accountability; Danna Droz, Karen Doyle, Ked Fitzpatrick, Mike Littlefield, Cabinet for Health Services; Ann Hager, Cabinet for Families and Children; Jeffrey L. Osman, Kentucky Board of Pharmacy.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Board of Nursing

201 KAR 20:070 & E. Licensure by examination. This administrative regulation was amended as follows: (1) The citation of statutes was corrected in the: RELATES TO and STATUTORY AUTHORITY paragraphs; (2) The NECESSITY and FUNCTION paragraph was amended to more clearly state the need for, and the function this administrative regulation will serve; (3) Various sections were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222 ; (4) Various terms and cross references were clarified; and (5) The "Certified List of Program of Nursing Graduates" was identified and incorporated by reference.

Kentucky Spinal Cord and Head Injury Research Program

202 KAR 4:010 (&E). Spinal Cord and Head Injury Research Program. This administrative regulation was amended to: (1) comply with the drafting requirements of KRS 13A.222(4)(j); (2) make it clear that Section 2(4) does not restrict the number of projects that may be approved for funding by the Board to one project; and (3) clearly establish the deadline for notification of an applicant of the Board's decision in Section 2(5).

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:178. Deer hunting on wildlife management areas. Commissioner Tom Bennett appeared before the Subcommittee and stated that this administrative regulation needed to be amended to correct some archery dates, to clarify other dates and to correct some typographical errors. Senator Preston moved that Section 5 of the administrative regulation be amended to specify the hunters involved, the tracts of land involved, to clarify the dates involved, and to correct typographical errors. The motion passed, and the agency agreed with the amendment.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack Damron appeared before the Subcommittee representing the Department. The incorporated material CPP 13.4 was amended to include program security review.

501 KAR 6:030. Kentucky State Reformatory. The incorporated material KRS 16-01-01 was amended to provide that the list of visitors not be available to anyone without approval from the warden or his designee. Mr. Damron explained that the visitors list contains private information such as addresses and social security numbers, which the Department believes it has no business giving out without a valid reason. He responded to questions raised concerning visitation that visitation is a privilege, not a constitutional right, and that different institutions can have different policies.

501 KAR 6:060. Northpoint Training Center. A typographical error in NTC 13-01-01 was corrected.

501 KAR 6:170. Green River Correctional Complex. This administrative regulation was amended to delete GRCC 13-02-02, relating to a $2 medical co-payment, and to delete from GRCC 13-04-01 the provision of one free copy of an inmate's initial and subsequent medical records to that inmate.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005. Safety regulations. Sandy Pullen, Staff Assistant to the Secretary, appeared on behalf of the Transpiration Cabinet. Ms. Pullen stated that: (1) this administrative regulation is: (a) a federal mandate; (b) amended three or four times a year; and (c) adopts the federal motor carrier safety standards; (2) the federal government amends its safety standards three or four times a month; and (3) the amendment submitted by the Cabinet reflects the most recent changes in the federal regulations.

This administrative regulation was amended include the most recent changes to the federal motor carrier safety standards contained in the Federal Register.

601 KAR 1:029. Definitions relating to 601 KAR 1:030 through 601 KAR 1:145. Ms Pullen stated that the Cabinet worked extensively with Subcommittee staff to bring 601 KAR 1:029, 601 KAR 1:030, 601 KAR 1:031 and 601 KAR 1:040 into compliance with Kentucky law and particularly KRS Chapter 13B.

Subcommittee staff stated that: (1) the amendments to all four administrative regulations will bring these administrative regulations into compliance with KRS Chapter 13B; (2) Subcommittee staff will meet with Cabinet staff to consider other issues that may or may not need clarification in this administrative regulation; (3) if KRS Chapter 13B requires additional changes, the Cabinet has agreed to submit the appropriate amendments.

This administrative regulation was amended to: (1) insert the correct statutory citations in the RELATES TO paragraph; and (2) properly format the definitions to be consistent with other definitions administrative regulations.

601 KAR 1:030. Hearings. Staff stated that this administrative regulation: (1) contained the most extensive KRS Chapter 13B amendments; (2) was amended to: (a) insert the correct statutory citations in the RELATES TO section; (b) clarify in the NECESSITY AND FUNCTION section that this administrative regulation must comply with KRS Chapters 13B and 281; (c) amend the following sections to clarify that: 1. in Section 2(1), the first notice is not a request for a hearing pursuant to KRS Chapter 13B; 2. in Section 2(3), a hearing pursuant to KRS Chapter 13B shall be scheduled if requested; 3. in Section 5, the hearing officer must grant any continuances; 4. in Section 6(1), default proceedings shall be

governed by KRS 13B.080(6); 5. in Section 6(4) and (9), evidence shall be admitted pursuant to KRS 13B.080 and KRS 13B.090; 6. in Section 6(14), subpoenas shall be issued by the hearings clerk "with the approval of the hearing officer"; and 7. in Section 9(1), a final order shall be issued within 90 days pursuant to KRS 13B.120(4); (4) renumber various subsections accordingly; and (5) delete Section 6(15), relating to character affidavits to be submitted with an application.

601 KAR 1:031. Procedure when no protest to notice of hearing is filed. This administrative regulation was amended to insert the language relating to submission of character affidavits with an application which was deleted from 601 KAR 1:030.

601 KAR 1:040. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission. This administrative regulation was amended to: (1) insert the correct statutory citations in the RELATES TO paragraph of the administrative regulation; and (2) move language incorporating material by reference to the last section.

Education Professional Standards Board

704 KAR 20:084 (& E). Interdisciplinary early childhood education, birth to primary. Ronda Tamme, Director of Teacher Certification, appeared on behalf of the Kentucky Department of Education. Ms. Tamme stated that this administrative regulation establishes the qualifications for granting a teaching certificate for children from birth to primary.

Senator Preston stated while the initial staff review indicated that the administrative regulation did not comply with statutory authority, he had been informed by Subcommittee staff that the initial review had inadvertently been marked as not in compliance with statutory authority was in error.

This administrative regulation was amended to clarify that a minimum score of 150 is necessary for passing the teacher certification test.

704 KAR 20:540. Professional certificate for administrator of pupil personnel services. Department personnel stated that this administrative regulation: (1) sets out the duties of an administrator of pupil personnel; and (2) provides that these standards are to be reviewed by the Educational and Professional Standards Board.

This administrative regulation was amended to: (1) amend the title of the administrative regulation to correctly reflect the job title set out in statute; (2) add relevant statutory citations in the RELATES TO paragraph; (3) insert strike out marks in the NECESSITY AND FUNCTION paragraph; (4) delete an inappropriately placed comma in Section 1(2); and (5) correct the format of Section 1(2)(d).

Cabinet for Health Services: Department for Health Services: Controlled Substances

902 KAR 55:030. Schedule IV substances. This administrative regulation was amended to: (1) Correct the citation of statutes in the STATUTORY AUTHORITY paragraph; and (2) comply with the drafting requirements of KRS 13A.220(4)(j).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Employees' Retirement System: General Rules

105 KAR 1:140. Contribution reporting. Joe Hutcheson appeared on behalf of the Kentucky Employees Retirement System (KERS). Mr. Hutcheson stated that: (1) this administrative regulation implemented the requirements of the 26 U.S.C. 401(a)(17) of the Internal Revenue Code that limited the amount of compensation upon which the retirement systems may base benefits to $150,000; (2) while this limitation became effective for most retirement plans on or after January 1, 1994, for KERS and other non-profit retirement plans this limitation became effective on or after January 1, 1996; (4) if an employee reaches the $150,000 limitation in a given year, the employer and employee will cease making contributions to the retirement system for that year; (5) while monthly service credit will continue to accumulate, no contributions will be made to the retirement system.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:172. Deer hunting seasons and requirements.

301 KAR 2:174. Deer hunting zones.

Natural Resources and Environmental Protection: Department for Environmental Protection: Division for Air Quality: Air Quality - General Administrative Procedures

Diana Andrews appeared on behalf of the Natural Resources and Environmental Protection Cabinet. Subcommittee staff stated that: (1) the "Definitions" administrative regulations add "acetone" and "perchloroethylene (tetrachloroethylene)" to the definition of Volatile Organic Compounds as required by federal law; and (2) 401 KAR 50:033 incorporates federal Acid Rain, Phase II application forms by reference. In response to questions by Representative Bruce, Cabinet personnel stated that these administrative regulations: (1) were "Definitions" administrative regulations; and (2) do not relate to automobile emissions.

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

401 KAR 50:033. Acid rain phase II application forms.

Air Quality - New Source Requirements; Nonattainment Areas

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

Air Quality - New Source Standards

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

Air Quality - Existing Source Standards

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

Air Quality - General Standards of Performance

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

Air Pollution - Mobile Source-related Emissions

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

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:120. Blackburn Correctional Complex.

Cabinet for Families and Children: Department for Social Insurance:

904 KAR 3:020. Financial requirements.

Cabinet for Health Services: Department for Medicaid Services: Medicaid Services

907 KAR 1:505 (& E). Psychiatric residential treatment facility services.

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

Department for Mental Health and Mental Retardation: Mental Health

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

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Finance and Administration Cabinet: Purchasing
200 KAR 5:021E. Manual of policies and procedures.

Board of Certification of Marriage and Family Therapists
201 KAR 32:040. Compensation of board members.
201 KAR 32:050. Code of ethics.
Board of Certification for Professional Art Therapists
201 KAR 34:010. Definitions.

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.

Department of Insurance: Authorization of Insurers and General Requirements
806 KAR 3:160. Life and health reinsurance agreements.
Kinds of Insurance; Limits of Risk; Reinsurance
806 KAR 5:025. Credit for reinsurance.
Health Insurance Contracts
806 KAR 17:066E. Medicare supplement insurance policies.

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: 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.

The Subcommittee adjourned at 10:50 a.m. until June 3, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **L2**

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 **L16**

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 **L26**

The Subject Index is a general index of administrative regulations published in VOLUME 22 of the Administrative Register, and is mainly broken down by agency.

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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
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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
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Replaced		9-7-95
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Replaced		9-7-95
500 KAR 11:100E	2441	2-28-95
Replaced	9-7-95	
600 KAR 5:010E	2973	5-11-95
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902 KAR 14:070E	2442	3-1-95
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902 KAR 14:080E	2444	3-1-95
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902 KAR 14:090E	2450	3-1-95
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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
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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

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201 KAR 1:064	3088	8-10-95
201 KAR 11:400	3089	(See Volume 22)
201 KAR 30:140		
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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		
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704 KAR 20:021	3100	8-3-95
907 KAR 1:025		
Amended	3079	(See Volume 22)

*Statement of Consideration not filed by deadline (KRS 13A.280)

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9 KAR 1:021E	214	7-11-95
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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
Expired		4-19-96
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 5:302E	2249	5-15-96
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 1:040E	2250	5-2-96
201 KAR 8:430E	2252	5-15-96
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
Replaced	1673	5-16-96
301 KAR 2:222E	1054	11-3-95
Replaced	1997	5-16-96
301 KAR 2:223E	1057	11-3-95
Replaced	1999	5-16-96
301 KAR 2:224E	1059	11-3-95
Replaced	1681	5-16-96
301 KAR 2:225E	695	8-23-95
Replaced	1174	2-12-96
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301 KAR 5:020E	1263	12-11-95
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301 KAR 5:030E	1265	12-11-95
Replaced	2001	5-16-96
302 KAR 20:115E	569	7-28-95
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415 KAR 1:114E	700	8-16-95
Replaced	1596	2-27-96
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500 KAR 6:190E	1559	2-14-96
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500 KAR 11:001E	2253	5-15-96
500 KAR 11:110E	2255	5-15-96
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
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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 3:285E	2257	5-15-96
702 KAR 7:065E	1269	12-15-95
Replaced	1728	5-16-96
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
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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
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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
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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
787 KAR 1:160E	239	6-22-95
Replaced	475	11-6-95
787 KAR 1:170E	239	6-22-95
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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
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787 KAR 1:280E	245	6-22-95
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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
Replaced	1730	5-16-96
803 KAR 2:320E	252	6-30-95
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Resubmitted	1562	2-15-96
803 KAR 2:403E	255	6-30-95
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803 KAR 2:404E	1275	12-6-95
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803 KAR 2:412E	1283	12-6-95
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803 KAR 2:425E	257	6-30-95
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Resubmitted	1567	2-15-96
803 KAR 2:500E	259	6-30-95
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Resubmitted	1569	2-15-96
803 KAR 50:010E	2259	5-15-96
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806 KAR 17:066E	1779	2-29-96
815 KAR 8:040E	21	6-6-95
Replaced	915	11-6-95
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902 KAR 14:070E	2269	5-15-96
902 KAR 17:021E	2272	4-30-96
903 KAR 5:001E	713	8-28-95
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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
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907 KAR 1:013E	887	9-28-95
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Resubmitted	2273	5-13-96
907 KAR 1:014E	264	6-30-95
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907 KAR 1:015E	266	6-30-95
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907 KAR 1:034E	2278	5-13-96
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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
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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
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Amended	108	8-16-95
201 KAR 8:330		
Amended	2317	
201 KAR 9:041		
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201 KAR 9:175		
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